



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on May 11, 2023. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

Both parties were present at the hearing and provided affirmed testimony. Both parties confirmed receipt of each others' documentary evidence and no service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the 2 Month Notice on December 31, 2022. The Landlord issued the Notice for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Landlord indicated he and his spouse would be moving in.

In the hearing, the Landlord was asked to explain why the Notice was issued, and stated that he owns several businesses in the Okanagan valley, and starting in June of 2023, he is starting a large project nearby the rental unit, and needs to live close by to where his project is, rather than live in Kelowna which is where he currently lives with his family. The Landlord stated that his plan is to move into this rental unit with his wife and child, for the duration of his project, so that he doesn't have to spend as much time commuting.

The rental unit is one of two units located above a convenience store, which the Landlord owns. The Landlord explained that he cannot move into the other unit because it is not as nice, and doesn't have parking, or a rear deck. The other unit also has road access only, and is less private. The Tenants feel the Landlord should have moved into the other unit, despite its deficiencies, because that unit was very recently vacant, in December of 2022.

The Tenants stated that they need more time to find rentals, since the market is so tight.

The Landlord provided a copy of a moving invoice, showing he paid a deposit for him to move as of June 1, 2023. The address of the rental unit is noted on the moving invoice. The Landlord also provided documentation from Shaw showing he has set up an install and transfer of his services to the new rental unit as of May 31, 2023.

Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as he has indicated on her 2-Month Notice).

The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith.

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that she, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

B. GOOD FAITH

When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

[...]

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I have considered the testimony and the evidence on this matter, in totality. I find the Landlord has provided two important pieces of documentary evidence, an internet account setup and a moving invoice/deposit. Both of these documents show the Landlord is intending to move into the rental unit starting at the end of May 2023, which is consistent with his testimony regarding him needing the unit to be closer to a project he is undertaking nearby. I note the Tenants do not feel this Notice was issued in good faith. However, I find the Landlord's explanation, in conjunction with the provided documentary evidence, is reasonable and compelling. I find the Landlord has sufficiently demonstrated their good faith intentions. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 15, 2023

Residential Tenancy Branch