



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask us for the following orders against the landlords.

1. Cancellation of a Two-month Notice to End Tenancy for Landlord's Use, issued on or about 27 June 2023 [the 'Two-month Notice'].
2. Reimbursement for overpayment of rent in the amount of \$30,000.00 [the 'Overpayment Claim'].
3. Suspension of landlords' right to enter the rental unit [the 'Entry Claim'].
4. Authorization to change the locks of the rental unit [the 'Locks Claim'].
5. Compliance with sections 24, 28, 29 and 43 of the Act [the 'Compliance Claim'].
6. Cancellation of a One-month Notice to End Tenancy for Cause, issued on or about 21 July 2023 [the 'One-month Notice'].
7. Reimbursement for the \$200.00 in filing fees for these applications.

The landlords appeared at the continuation of this hearing on 26 October 2023, along with an advocate. The tenants also appeared.

Note that we refer to the parties in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Preliminary Matter – Relevance of Claims

Rule 2.3 of the RTBs Rules of Procedure reads: 'Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.'

Before the continuation of this hearing, we received fulsome argument in writing from both parties as to the relationship between (a) the dispute over the Two-month Notice and the One-month Notice [the 'Notices'] and (b) the Overpayment Claim; the Entry Claim; the Locks Claim; and the Compliance Claim [the 'Remaining Claims'].

We were not convinced that there was sufficient relationship between these Remaining Claims and the dispute over the Notices.

The dispute over the Notices centres on whether this tenancy ought to continue. Whereas the dispute over the Remaining Claims centres on issues that are only relevant should the tenancy continue (*i.e.* the Entry Claim; the Locks Claim; and the Compliance Claim [the latter dealing, in part, with the quiet enjoyment by the tenants of the unit]); and that are otherwise related to overpayment of rent (*i.e.* the Overpayment Claim; and the Compliance Claim). None of these issues relates to whether the tenancy should continue.

And so we dismiss these Remaining Claims *per* rule 2.3, on the following terms:

1. The Entry Claim and the Locks Claim are dismissed without leave to re-apply.
2. The Compliance Claim and the Overpayment Claim are dismissed with leave to re-apply.

We make no findings on the merits of the Remaining Claims, only that they are insufficiently related to the Notices for the claims to be considered as part of this hearing (which is intended to be a relatively informal and expeditious procedure and short in duration).

Preliminary Matter – Oral Statements

During the hearing of this dispute, we exercised our discretion to hear oral statements of fact from the parties and witnesses under affirmation *per* section 74 of the Act. In doing so, we relied solely upon the representations of the parties as to the identity of themselves and of the witnesses.

Issues to be Decided

Did the landlords issue the Two-month Notice in good faith?

If not, then did then is there cause to uphold the One-month Notice?

Are the tenants entitled to reimbursement from the landlords of the filing fees for these applications?

Background & Evidence

We considered all the testimony of the parties and their witnesses, as well as all the documents and records to which the parties directly referred us during these hearings, but we will only recount that evidence that is germane to our decision.

The landlords affirmed that they wanted to end this tenancy so that their daughter [the 'Daughter'] and her family could move into the rental unit. This plan lead the landlords to issue the Two-month Notice.

In drafting the Two-month Notice on or about 27 June, the landlords' son:

1. used the form approved by the RTB;
2. signed and dated the notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the notice as 31 August 2023; and
5. stated the basis for the notice as occupancy by the landlords' child or spouse.

The Daughter testified. She affirmed for us the following:

1. the landlords live next door to this unit;
2. her children grew up in the neighbourhood of the unit;
3. since moving away from that neighbourhood, she and her family having been making a lengthy commute from their home to the city where this unit is and where their children attend school;
4. because of this commute, they hoped to return to somewhere closer to this neighbourhood;
5. the landlords suggested to her that she and her family move into this rental unit, so as to return to their former neighbourhood and avoid this commute; and
6. because of this suggestion, that is precisely what the Daughter and her family hope to do.

The tenants cross-examined the Daughter, but her testimony remained unchanged during this cross-examination.

The tenants then told me that shortly before issuing the Two-month Notice, the landlords spoke with the tenants about their desire to raise the rent, and when the tenants refused to this raise, the landlords issued the Two-month Notice.

The landlords denied speaking with the tenants about raising the rent before issuing this notice. But they did acknowledge that their son spoke with the tenants last year about raising the rent.

In response, the tenants showed us screenshots of text messages that they received from the landlords' son in May of this year, referring to a proposed significant-increase in rent. The landlords did not refute these texts.

Also, we heard from the parties references to a dispute over how many people were occupying this rental unit, and whether there was agreement about this occupancy.

Analysis

We have considered all the arguments made by the parties, along with testimony upon which they rely, and all the documents and records to which the parties directly referred us during these hearings.

The issue before us regarding the Two-month Notice is whether the landlords issued it in good faith.

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. We find that the landlords have the burden to prove that they have sufficient grounds to issue the Two-month Notice. That is, they have the burden to prove that they probably issued the Two-month Notice in good faith.

The tenants dispute that the Two-month Notice was issued in good faith. 'Good faith' is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the court held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

We accept the testimony of the Daughter. What she told us about her hope to return to the neighbourhood in which the unit is (where her children grew up and where the landlords also live) makes sense. So too does her hope to reduce the commute from

where she lives now to where her children are schooled. She was forthright in her evidence, and co-operative with her examinations. While she may have an interest in the outcome of this dispute (by returning to her former neighbourhood), it is not the interest that the tenants allege the landlords themselves have, *i.e.* the increase of rent for this unit. Her affirmed hopes were consistent with what the landlords told me about their reason for issuing the Two-month Notice. And these remained unchanged despite the tenants' cross-examination.

The tenants argued that there was no proof that the Daughter was a child of the landlords. But we note that this allegation was never put to the Daughter in cross-examination, and so the argument carries no weight with us.

The tenants' main argument is that the landlords acted in bad faith by issuing the Two-month Notice, and this argument turns on the alleged ulterior motive of raising the rent.

We accept that the landlords' son proposed significantly raising the rent about a month before drafting the Two-month Notice. We also find the issue of increasing the rent not inconsistent with the dispute between the landlords and the tenants about how many people ought to be residing in the unit. In other words, the issue of what rent ought to be paid seemed tied to how many people were living in the unit.

But of greatest significance, when we weigh attempted rent-increase against the credibility of the Daughter, we accept that – despite the attempt at raising the rent – the landlords still probably intend for their Daughter to move into the unit. While the landlords may have initially hoped to get more rent from the tenants, this does not preclude them from subsequently deciding that they would ultimately rather have their Daughter and her family living in the unit next door.

Considering all the evidence adduced at these hearings, we find that the landlords probably intend to have their Daughter move into the unit. This means that we accept that they issued the Two-month Notice without ulterior motive, that is, in good faith. Accordingly, we dismiss the tenants' application to cancel the Two-month Notice, without leave to re-apply.

And should the Daughter fail to move in, no doubt the tenants are aware that they can apply for compensation from the landlords in the amount of 12-months worth of rent.

Though this is an application by the tenants to cancel the Two-month Notice, section 55 (1) of the *Residential Tenancy Act* [the 'Act'] still requires us to grant an order of possession if the Notice is effective.

And section 52 of the Act tells us that for a notice to end tenancy to be effective:

1. a landlord must sign it and date it;

2. it must give the address of the rental unit, and state the effective date of the notice;
3. it must also state the grounds for ending the tenancy; and
4. it must be in an RTB form.

Based on the evidence at this hearing, we find the Two-month Notice is an effective one, and should be upheld. Accordingly, we are required to grant an order of possession to the landlords.

As we have determined that this tenancy has ended, there is no need for us to consider the dispute over the One-month Notice.

And as the tenants did not prevail in their applications, we do not find that the landlords must reimburse them for the cost of filing their applications.

Conclusion

We make an Order of Possession in favour of the landlords. This order is effective 1 p.m. on 30 November 2023, and must be served upon the tenants.

If the tenants or any occupant of the rental unit fails to comply with our order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

We make this decision on authority delegated to us by the Director of the RTB under Section 9.1(1) of the Act.

Dated: 27 October 2023

Residential Tenancy Branch