

## **DECISION**

Dispute Codes      CNL, MNDC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a two month Notice to End Tenancy for the Landlord's use of the rental unit, for monetary compensation of \$8,000.00 for harassment and stress, and to recover the \$50.00 filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Is the Tenant entitled to monetary compensation?

### Background and Evidence

This tenancy began in January of 2008, with the parties entering a fixed term, written tenancy agreement.

Over the course of the tenancy there were several problems between the Landlord and the Tenant. Both parties entered lengthy submissions outlining the perceived problems they had with each other. It appears from the evidence submitted that at times both parties sent the other exacerbating letters, as well as letters of contrition and seeming cordiality.

Nevertheless, I find that much of the evidence submitted was largely irrelevant to the issues in this matter. Therefore, I will only recount the relevant evidence in this Decision.

On September 30, 2009, the Landlord issued the Tenant a two month Notice to End Tenancy, with an effective end date of November 30, 2009 (the "Notice"). The Landlord issued the Notice in accordance with section 49 of the Act, which allows the Landlord to have a close family member, in this case his son, move in and occupy the rental unit. Under the provisions related to this section of the Act, the Landlord must also give the Tenant the equivalent of one month free rent when ending the tenancy in this manner.

The Tenant filed her claim to dispute the Notice, saying the Landlord is not ending the tenancy in good faith. She also claims the Landlord has harassed her and caused her

stress for eight months and requests she be compensated with the return of all her rent paid for that time, or \$8,000.00. She lives with her children and her elderly mother in the rental unit.

The Landlord testified and provided evidence that his son is moving back to British Columbia from outside of Canada. He testified his son, his wife and their three children would occupy the rental unit. He explained his son has investigated the rental market and the requirements to purchase a property in British Columbia. The Landlord explained his son and his family will occupy the rental unit while they re-establish their credit rating in Canada, in order to purchase a property of their own in the future, rather than rent. He stated his son is intending on moving into the property on December 1, 2009, the day after the effective date of the Notice.

The Tenant testified that while she does not dispute that the Landlord's son will be moving into the rental unit, she does question the Landlord's motives in ending the tenancy in this way. She claims it is more likely that the Landlord wants to sell the property and does not want to provide the Tenant with an opportunity to stay in the property, should the potential purchaser choose to continue to rent the property to her. The Tenant further questioned whether or not the Landlord's son would live in the rental unit for a reasonable amount of time.

The Tenant further alleges the Landlord simply does not like her and alleges the Landlord has slandered and harassed her causing her stress.

### Analysis

Section 49(5) of the Act includes a provision that the Landlord must act in good faith in ending the tenancy.

Part 2 of the Residential Tenancy Policy Guideline includes the following explanation of the good faith requirement:

#### 2. Ending a Tenancy Agreement: Good Faith Requirement

...

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal

responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive

It is clear by the Tenant's submissions that she has called the good faith intent of the Landlord into question here.

Based on the foregoing, the affirmed testimony and evidence and on a balance of probabilities, I find as follows:

**I find the Notice to be valid and enforceable, and I dismiss the Tenant's Application to cancel the Notice.**

I find the Landlord intends in good faith to have his close family member, his son, occupy the rental unit. There is evidence from the Landlord and his son which support this intention. Furthermore, the Landlord provided the Tenant with advance notice in August of 2009, that there was a "50-50" chance his son would be occupying the rental unit.

I do not find the primary motive for the Landlord ending the tenancy is to retaliate against the Tenant, or that he is attempting to avoid his responsibilities under the Act.

While the Landlord did not want to renew the last tenancy agreement as a term tenancy, and thereby did make one previous attempt to end the tenancy, these do not establish pressing or ongoing attempts to evict the Tenant for improper or invalid reasons.

In fact, several months ago, the Landlord had every right to end the tenancy following the end of the fixed term tenancy agreement, however, the Tenant refused to move.

The Landlord has also responded in support of the Tenant's needs in the rental unit, such as allowing the installation of a ramp for her mother to access the rental unit and property.

I also note that the Landlord had evidence which might have supported an eviction due to creating disturbances, in particular, the disturbances allegedly created by her dogs. Nevertheless, the Landlord did not attempt to evict her for cause.

In fact, I do not find there were dishonest or undisclosed motives on behalf of either of the parties here. The Tenant simply does not want to move and has asserted her right under the Act to dispute the Notice.

The Tenant is also well aware that section 51 of the Act would provide her with additional compensation, should the rental unit not be used for the Landlord's stated purpose. For clarity, I include the relevant portion of section 51:

...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this particular case I am also guided by the British Columbia Supreme Court decision in *Sandhu v. Yzereff* (1982), 40 B.C.L.R. 169, and in particular by the summation of this decision in the *Annotated British Columbia Residential Tenancy Act*, by Allan J. Wotherspoon, Canada Law Book (2008) at page 64:

"In interpreting the Act, one must consider paramount the social policy underlying the statute, namely, one which provides fairness to both landlord and tenant..."

**As to the monetary claim for \$8,000.00, made by the Tenant for harassment and stress, I dismiss this portion of the claim.**

When making a claim for monetary damages under the Act or tenancy agreement, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, that there be verification of the actual loss or damage claimed, and proof that the party took all reasonable measures to mitigate their loss.

I find that the Tenant provided insufficient evidence to prove that damage or loss occurred, such as a medical opinion from her doctor, showing that she suffered from stress or harassment caused by the Landlord. She claims she has talked to her doctor about this prior to the hearing, however, she has not submitted any evidence to support this at the hearing.

I am further guided by the definition of harassment, provided by Mandel J. in *Roth v. Roth*, [1991] 9 C.C.L.T. (2d) 141 at p.1:

"In my view the principle to follow is put thus by Fleming, *The Law of Torts*, 7<sup>th</sup>

ed. (Sidney: Law Book, 1987) at p.575:

Clearly, no liability is warranted unless the intrusion is substantial and of a kind that a reasonable person of normal sensitivity would regard as offensive and intolerable. Merely knocking at another's door or telephoning on one or two occasions is not actionable, even when designed to cause annoyance; but if the calls are repeated with persistence, and in the midst of night, so as to interfere unreasonably with comfort or sleep, liability will ensue."

Furthermore, as stated above, the Tenant sent multiple letters to the Landlord that also where not likely welcomed by the Landlord. Nevertheless, I find none of the letters or actions related to me in this matter constitute an actionable harassment.

There is evidence on a secondary matter, which I accept, that the Landlord exceeded the legislated amount of rent increase during the final months of this tenancy. In August of 2009, the rent was raised by 4%, contrary to the allowed 3.7% under the Act.

Therefore, **I find the Landlord must pay the Tenant back the rent increase charged, in the amount of \$120.00, comprised of the \$40.00 increase received for each of the months of August, September and October of 2009.**

Lastly, as the Tenant's Application to cancel the Notice to End Tenancy was dismissed and at the time of dismissal the Landlord requested an order of possession, I must issue an order of possession in accordance with section 55 of the Act.

Therefore, I grant and issue the Landlord an order of possession effective at **1:00 p.m. November 30, 2009**, being the effective date of the Notice.

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: October 30, 2009.

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Dispute Resolution Officer