



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants have applied to cancel a two Month Notice to End Tenancy for Landlord's Use, an Order the landlord comply with the Act and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The parties confirmed receipt of all documents within the required time limits.

Preliminary Matters

At the start of the hearing I confirmed that the issue to be decided was based solely on a Notice to end tenancy; no other Order was sought by the tenants.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on April 28, 2015 be cancelled?

Background and Evidence

This tenancy commenced in 2008. The parties agreed that rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence. The landlord present at the hearing testified that his spouse owns the rental unit.

The tenants confirmed receipt of a two month Notice to end tenancy for landlord's use on April 29, 2015. When the Notice was served to the tenants by an employee of the landlord the tenant say that person told the tenants the landlord's' brother was to live in the home.

The Notice has an effective date of July 1, 2015 and contained a single reason:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) or the landlord or the landlord's spouse.

Hand-written under the reason selected on the Notice was "brother."

A number of emails sent between the parties were supplied as evidence.

On May 5, 2015 the tenants informed the landlord that the Notice failed to comply with the Act and that they would dispute the Notice; they had done so the day prior. On May 6, 2015 the landlord replied that the form only told part of the story that he did not wish to put the tenant's family out more than necessary and that they should speak.

On May 11, 2015 the landlord sent a message confirming he had received the hearing documents on that date and that he had received a call for references in relation to an application made by the tenants, to rent elsewhere. The landlord referenced a conversation and reiterated that he did not feel it was incumbent upon him to explain the family situation. The landlord explained he had hand-written the note about his brother on the Notice, but that it did not mean "brother to the exclusion of others." The landlord said that his mother was elderly, lived in the area of the rental unit and had been very sick over the past year. The landlord's brother lives elsewhere in the lower mainland and that by all family members utilizing the rental unit property they would be close to his mother. The landlord explained that his family must come first.

The tenants replied on the same day. The tenants explained that a move would cause them enormous upheaval and stress. The tenants stated that the Notice was issued so the landlord's brother could move into the unit. The tenants go on to tell the landlord that they are empathic to the landlord's mother's ill health and if needed they will seek out other suitable accommodation. The tenants requested compensation for all direct and indirect moving costs, return of the security deposit and free rent for the final month of the tenancy.

On May 12, 2015 the landlord called the tenants' potential new landlord and gave a reference for the tenants. Two days later the tenants emailed the landlord asserting the landlord did not have a legal right to end the tenancy. The tenants said they were seeking new accommodation out of an abundance of caution. The tenants requested a certified cheque no later than May 15, 2015 in the sum covering a total of \$9,085.75 for moving, packing, indirect costs and return of the deposit. If the potential rental option did not work out for the tenants they would agree to return the cheque to the landlord and continue their search for alternate accommodation. The tenants said that if the landlord withdrew the Notice and paid the sum requested the tenants would withdraw their application for dispute resolution.

The landlord responded on May 14, 2015 thanking the tenants, but disagreeing with the tenants' assessment of the landlord's right to end the tenancy. The landlord did offer to try to reach an agreement with the tenants.

On May 16, 2015 the tenants emailed telling the landlord the potential rental option had not succeeded. The tenants then requested compensation, include the security deposit in the sum of \$9,274.95.

The next day the landlord replied that they wished to possess the rental unit so his brother could live with them in the home and that he was added to the Notice as a potential occupant. The tenants replied asking if the landlord was planning on living in the home with his brother. The landlord replied that he did not understand why the tenants were confused. He explained that whether he, his mother or his family lived in the house was none of the tenants' business.

The tenants raised the issue of good faith based on their belief the landlord has no intention of moving into the rental unit. The tenants believe that the landlord has an ulterior motive. The tenants said that the absence of details of an imminent move by the landlord, the fact his children are not likely the change school between grade six and seven indicate the Notice was issued in bad faith.

It is not clear to the tenants, who will move into the rental unit. The tenants suspect the landlord will use the home intermittently and will essentially use the home as a "pied a Terre" rather than a full-time residence. The tenants do not believe that this type of use supports ending the tenancy and that the good faith intention to occupy the unit is, therefore, not met. The tenants believe the landlord must show that he intends to move into the unit.

When I questioned the tenants' on the meaning of occupy the agent stated that the good faith requirement can only mean the landlord must use the rental property on a full-time basis. If the landlord intends to go into the home once per month that level of use fails to meet the requirement. When asked if the landlord owned multiple residential properties, if he would be required to live in this one property the agent responded that occasional use was not sufficient to end the tenancy.

The landlord responded that he has been clear, concise and cannot speak to whether the tenants believe him or not. The landlord denied he has acted in bad faith. The landlord had not wished to delve into the details of the family situation but did supply a two page hand-written note from his 85 year old mother.

The landlord's mother explains that she supports her son's intention to move back into the rental unit property. The mother explains that the landlord wishes to be near to his mother and more present in her daily life. The mother explains that she needs her son and family nearby and that specific serious health challenges have made it difficult for her to cope. The note mentions the landlord's spouse as an important support person. The landlord's mother explains that the fact her other sons' intention to also occupy the home, would invalidate the Notice, seems strange.

The tenants found the mother's note purposely misleading and doubt the landlords' family will relocate their children.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the two month Notice to end tenancy for landlord's use of the property issued on April 28, 2015 is of force and effect. I have reached this conclusion after taking into account the submissions of the parties and Residential Tenancy Branch policy and the Act.

First, I have considered the notation made on the Notice, adding "brother" to the reason selected on the Notice. The landlord does not dispute that his brother may stay at the

home; this is confirmed by the landlord's mother. The landlord did not make any deletions on the Notice, removing father, mother, or child; however, he did add another family member. I find, on the balance of probabilities that the notation was an honest disclosure made by the landlord that the brother would also occupy the home. This was pointed out to the tenants in the landlord's May 11, 2015 email.

The tenant raised the issue of good faith, which Residential Tenancy Branch Policy (#2) references:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

From the evidence before me I find, on the balance of probabilities that the landlord is motivated by a sincere concern for his mother and her health and her need for near-by support. The letter written by the landlord's mother confirmed what the landlord has told the tenants since the Notice was issued. There was no other ulterior motive suggested by the tenants; other than the landlord will not reside in the rental unit. I find that the landlords' close family members (landlord, spouse) do intend, in good faith, to occupy the home so that the landlord's mother can receive support. There was no other ulterior motive presented as a reason for the Notice; such as a suspected sale, renovation or installing new tenants.

The tenants did not dispute that family members would come and go from the home and use the home, but they reject occasional use as sufficient reason to end the tenancy for the reason given on the Notice. The tenants interpret the statutory requirement to mean that the landlord's close family members must reside in the home on a full-time basis. I have rejected that reasoning.

I have considered the definition of "occupy" provided in *Black's Law Dictionary*, 6th Edition, which provides:

"To take or enter upon possession of; to hold possession of, to hold or keep for use; to possess..."

"Occupancy" is defined, in part, as:

"Taking possession of property and use of the same..."

This leaves me to find that the intention of the landlord meets the requirement set out in section 49(3) of the Act. The Act and Notice issued do not require the landlord or a close family member to reside in the rental unit; they must only intend to occupy the rental unit. I find that this is the landlords' good faith intention. The landlord is required to occupy

the unit within a reasonable period of time, for at least six months; in accordance with section 51(2) of the Act.

As the effective date of the Notice is July 1, 2015 I find, given the time between the tenants' May 4, 2015 application and the hearing date and this decision, pursuant to section 66 of the Act that the effective date of the Notice should be changed.

Therefore, I find that the effective date of the Notice is July 15, 2015. The parties are at liberty to reach a written mutual agreement allowing a different tenancy end date.

The tenants will be entitled to compensation pursuant to section 51(1) on or before the effective date of the Notice or any other agreed tenancy end date.

Conclusion

The two month Notice to end tenancy for landlord's use of the property issued on April 28, 2015 is of full force and effect. The tenancy will end based on this Notice.

The effective date of the Notice is July 15, 2015.

This decision is final and binding and 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: June 19, 2015

Residential Tenancy Branch

