



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, OLC

Introduction

This hearing was convened in response to an application by the tenant filed August 10, 2015 under the *Residential Tenancy Act* (the Act). The tenant requested the landlord comply with the Act in respect to multiple historical issues in dispute between the parties. The tenant subsequently amended their application, to dispute / cancel a 2 Month Notice to End for Landlord's Use of Property (the Notice) dated September 13, 2015 with an effective date of November 30, 2015.

Both parties attended the hearing and were given opportunity to present relevant evidence in respect to the application and make relevant prior submission of evidence to the hearing and fully participate in the conference call hearing. The respondent landlord was represented by their agent, and prospective occupant of the rental unit of this matter. The parties acknowledged receiving all the evidence of the other. The tenant referenced a land title search document which was not sent to the landlord's representative; however the tenant was given opportunity to testify in this respect and for the landlord's agent to respond.

The landlord's agent requested an Order of Possession if I upheld the landlord's Notice.

The tenant was informed their application seeking the landlord to comply with the Act is not sufficiently related to the primary application to cancel the landlord's Notice to End, and as a result the balance of their application would not be considered, and was **dismissed, with leave to reapply**. The hearing proceeded on the merits of the tenant's application respecting the Notice to End for Landlord's Use in which the tenant disputes the landlord's *good faith* intention respecting the Notice to End.

Preliminary matters

The Style of Cause was amended to accurately reflect the rental unit in respect to the

residential property. The tenant occupies a room in the basement portion of a house with additional rental units, including that of the landlord's son and agent for this matter.

The parties agree the respondent landlord (LT) is not the *owner* of the residential property, however has historically acted in capacity as a landlord, and is landlord according to the Act definition of landlord. The parties agree the brother of the agent in this matter is the *owner* and also is a landlord according to the Act definition of landlord, which the agent of this matter purports to also represent. The parties further agree the *owner* does not reside on the residential property of the rental unit.

It must be noted that in this type of application, the burden of proof rests with the respondent landlord to establish that the Notice to End was validly issued in concert with Section 49 of the Act.

Issue(s) to be Decided

Is the landlord's Notice to End for Landlord's Use valid?

Should the landlord's Notice be cancelled?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The relevant evidence in this matter is as follows. The tenancy began in 2007 as a verbal tenancy agreement: no written agreement exists. The tenant claims they rented the room from a representative of the respondent landlord. The parties' document submissions into evidence concur an acrimonious and disputatious relationship between the parties to this matter over the past year respecting the payment or non-payment of rent, allegations of loss, loss of use and loss of quiet enjoyment and tenant's claims of arbitrary conduct by the landlord. It is not disputed the landlord attempted to end the tenancy for their use on a previous occasion in 2014 and the matter was purportedly resolved prior to a scheduled hearing over the matter.

The landlord's agent testified that following the tenant's original application of August 10, 2015 they gave the tenant a new 2 Month Notice to End for Landlord's Use under their own name: again, as agent for the respondent landlord.

The tenant provided they do not dispute that the landlord's son/agent truly intends to occupy the rental unit. However, the tenant claims that the conflictual relationship of the parties and the items in dispute brought forth by the tenant in the past and in their current application of August 10, 2015, raises the spectre the respondent landlord has

another purpose or motive for wanting to end the tenancy and, to the tenant, it places in question the landlord's *good faith* intention required by the Act.

The landlord's agent testified they honestly intend to occupy the rental unit, and it clearly complements the tenant's evidence. The landlord's agent testified that, as prospective occupant, they are seeking to garner additional, unencumbered and un-intruded space for their family. The landlord's agent testified, and provided into evidence, they themselves, as the prospective occupants of the tenant's unit, do not have another purpose for the rental unit or an ulterior motive for seeking an end to the tenancy.

Analysis

In this matter, if I were to accept that the *owner* of the rental unit is the sole landlord, then the Notice to End is clearly not valid, as the intended occupant, and agent for the landlord in this matter, is the brother of the *owner*, and the relationship does not qualify within the definition of *close family member* afforded by the Act. However, I find that the named respondent of this matter (LT) is also landlord by definition. It is reasonable to accept the agent's testimony they issued the 2 Month Notice to End in their name on behalf of the respondent landlord.

Residential Tenancy Policy Guideline 2 – Good faith Requirement when Ending a Tenancy, addresses demonstration of good faith when a landlord ends a tenancy for landlord's use of property. This and other resources can be accessed from the Residential Tenancy Branch website at www.gov.bc.ca/landlordtenant.

I have reviewed all of the document and oral evidence in this matter. On preponderance of all the relevant evidence I find that given the ongoing disputatious tenancy relationship the tenant has provided sufficient evidence questioning whether the respondent landlord has a dishonest purpose for ending the tenancy. As a result I find the onus rests on the respondent landlord to demonstrate they do not have a different purpose or an ulterior motive for ending the tenancy.

As a result of the above, while I accept both the document and testimonial evidence of the landlord's prospective occupant (and agent in their matter), I find the evidence advanced by the agent is not that of the respondent landlord. Rather, I find that through their agent, the respondent landlord has provided evidence supporting the purpose and motive of their *prospective occupant*, but not theirs. I find I have not been provided evidence *by the respondent landlord* (LT) demonstrating they do not have an ulterior motive for ending the tenancy. As a result I find the landlord in this matter has not met their burden of sufficient evidence demonstrating the *good faith* requirement for ending

the tenancy. Therefore, I hereby **cancel** the landlord's 2 Month Notice to End dated September 13, 2015, with the effect that the tenancy continues.

It must be noted it remains available for the landlord to issue a new valid Notice to End.

Conclusion

The application of the tenant, in relevant part, is granted. The landlord's 2 Month Notice to End for Landlord's Use is **cancelled** and is of no effect. The balance of their claims is **dismissed**, with leave to reapply.

This Decision is final and binding on both parties.

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 20, 2015

Residential Tenancy Branch

