



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 7, 2017, wherein she sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on November 22, 2017 (the "Notice") as well as recovery of the filing fee

The hearing was conducted by teleconference on February 22, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to dispute a Notice the Landlord must present their case first as it is the Landlord who must prove the reasons for issuing the Notice on a balance of probabilities.

The Landlord testified as follows. He stated that he moved into the property in 1994. He stated that he was a tenant for a short time and then became the property manager in approximately 1996. He then managed the property until 2016 when he retired. As recognition for his many years as a property manager, he was given a fixed term tenancy until May 31, 2026. He stated that he received this 14 year tenancy as a “special bonus” for all his years as a property manager.

The Landlord then entered into a sub-tenancy with the Tenant as he wished to rent out his rental unit while he was out of Canada visiting family.

Counsel for the Tenant confirmed that there was no issue that the Landlord was permitted to enter into such a sub-tenancy pursuant to his head tenancy agreement.

The Landlord stated that originally the tenancy was to end in December of 2016, but he let the Tenant stay longer as she had no place to go and he wanted to give her time to find alternate accommodation. He said that despite giving her more time to find a place to live, he believes she hasn’t applied anywhere else. He further stated that after some time, he wanted to regain possession of his unit and as such issued a 2 Month Notice to End Tenancy on November 22, 2017.

The Landlord was living with his brother overseas and stated that “the situation wasn’t good for him” and he wanted to come back to Canada and to his apartment which he considers his home. He said that it has been his home for many years and he wants to stay in Canada and visit his home country occasionally. He confirmed that he is currently living in his daughter’s apartment in another community and because he does not have a bed, he sleeps on a massage table (she is a registered massage therapist).

He submitted that his tenancy agreement gave him the right to sublet and he would sublet again if required; he simply wants to have his home back. He stated that he is planning to stay in the rental unit until at least the end of the summer, at which time he may sublet again. He wants to be in Canada with his kids here.

Counsel for the Tenant suggested that the Landlord intends to stay in the property for only two months. The Landlord replied that he must be in Canada for 6 months. He also stated that at one point in time he told the Tenant he would only be in Canada for a short time, but his intentions changed. He said that he had a “woman in his country but they broke up” such that he doesn’t have any reason to stay there for a long period of time anymore. He confirmed that he has been in Canada since October 2017 and he can leave now, but he does not have the intention to leave

Counsel for the Tenant suggested that the Landlord would have let the Tenant stay if she paid more rent, and referred him to an email sent on August 29, 2017 wherein the Landlord offered the unit to the Tenant for \$1,550.00. In that same email the Landlord suggested to the Tenant that he would make a little corner in the suite for his bed and he would only be there on weekends. In response, the Landlord said that it was the Tenant who offered \$1,550 and asked that she be able to have a roommate; further, he said she withdrew that offer. He reiterated that he gave her time to find another place but she has not been looking.

The Landlord further stated that two bedrooms units in his building are now being rented for a minimum \$1,600.00. He reiterated that his “bonus” was that he did not have to pay this amount because he has a long fixed term tenancy; he further stated that he could not afford the higher rent because his pension is very low.

Counsel for the Tenant suggested that the Landlord had more income and asked the Landlord to confirm that his income was only \$1,000.00. The Landlord said he has a little bit of savings from the years he worked. He also stated that while his rent is \$900.00, the new owners have offered him employment as a relief building manager working on the weekends for \$900.00. He stated that the people in the building were very upset when he retired. He stated that the low rent he pays, as well as his savings, and his part time earnings will allow him to remain in his apartment. He also stated that due to his low income, he would qualify for government subsidies which may help him pay his rent.

Counsel for the Tenant suggested the Landlord does not want to live in Canada but wishes to live in his home country. The Landlord confirmed that he has two children in Canada and two children in his home country. He said it is difficult to decide but it is his decision to stay in Canada and visit his home country.

Counsel suggested that the Landlord is dishonest as he told the Tenant that the rent he paid was \$1,200.00. The Landlord stated that he is not obligated to disclose to the amount he is to pay for rent.

The Tenant confirmed that he opposed the introduction of a letter from R.P. which was submitted by the Tenant. Counsel for the Tenant stated that the letter spoke to the Landlord's conduct and credibility. R.P. was not at the hearing to testify.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities, I find that the Tenant's Application to cancel the Notice should be dismissed.

The Tenant alleged the Landlord did not issue the Notice in Good Faith.

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

Residential Tenancy Policy Guideline 2 explains the good faith requirement as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

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 the Tenancy.

This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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.

I find the Landlord intends in good faith to move back into his rental unit.

It is clear from the evidence that the Landlord has tried to help the Tenant by allowing her more time to stay in his rental unit than he originally intended. Text communication submitted in evidence by the Tenant shows that in September of 2016 he was alerting her to alternate accommodation within the building that might be of interest to her. This communication also shows that he was trying to accommodate her requests to remain in the rental unit, but he feared how this might impact his pension and medical coverage, as well as the “bonus” he received of a long fixed term tenancy.

In November of 2016 the Landlord suggested that he simply have the small bedroom. More recently, the Landlord suggested to the Tenant that he be able to reside in the unit with her, provided that he have a “little corner” for himself.

I accept that at one point in time the Landlord considered renting the unit to her for a higher price after he regained possession of his rental unit. This is clear from email communication in August of 2017. That, of course, was within their rights to negotiate as Landlord and Tenant.

I also accept the Landlord's evidence that his plans have now changed such that he intends to be in his rental unit for an extended period of time. He testified that one point in time he had a romantic relationship with a person outside of Canada and therefore spent more time away. He says that relationship has ended and he wishes to primarily reside in Canada.

I do not find the primary motive for the Landlord ending the tenancy is to increase rent, or to rent to another party or that he is attempting to avoid his responsibilities under the *Act*. I find that he has an honest intention to move back into his rental unit, and does not have an ulterior motive.

Counsel submitted that the fact the Landlord suggested another rental unit to the Tenant is an indication he did not issue the Notice in good faith. I disagree. The evidence confirms the Landlord has tried to work with the Tenant to help her secure alternate accommodation. He is not a Landlord with numerous rental units in the same building, offering a more expensive unit to the Tenant and thereby potentially profiting

from her move; he is, rather, a Tenant himself, without any legal interest in the rental building.

Counsel also submitted that I should find the Landlord to be not credible for a variety of reasons.

Firstly, he did not advise her that the rental building was about to be acquired by new owners. As the Landlord's "head tenancy" would continue to exist after any such sale, I find this to be irrelevant.

Secondly, he alleges that the Landlord lied about the amount of rent he was obligated to pay and whether parking was included. Just as a property owner is not obligated to disclose their monthly mortgage payments, or other expenses related to a rental unit, I find that the Landlord was not obligated to disclose the amount of rent he paid to the head Landlord. His ability to rent out his unit at a higher price, in addition to his extended fixed term tenancy are part of his "bonus".

Finally, counsel also submitted that the Landlord should be deemed not credible and that I should rely on a letter from R.P., who was building manager who took over after the Landlord retired. R.P. was not at the hearing to provide testimony and therefore was not subject to cross examination on the claims made in his January 12, 2018 letter. While hearsay is admirable in proceedings before the Residential Tenancy Branch, I find this letter should be given little weight. I accept that the Landlord has been offered a job as a relief manager upon his return to his rental unit. This suggests the owners continue to trust him.

I found the Landlord to be honest and forthright in his responses. I accept his testimony that he honestly intends to reside in the rental unit, and that while he may continue to travel occasionally to his home country, his intention is to reside primarily in Canada, in the rental unit he calls his home.

Understandably the Tenant does not want to move and has asserted her right under the *Act* to dispute the Notice. The rent paid for her sub-tenancy is significantly lower than that which is currently being offered in the building.

Should the rental unit not be used for the Landlord's stated purpose on the Notice, section 51(2) of the *Act* would provide her with additional compensation, for clarity, I reproduce that section as follows:

...

(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 all the circumstances, I find the Landlord intends to occupy the rental unit and therefore that he has proven the Notice.

The Tenant's Application to cancel the Notice is therefore dismissed.

Pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession effective March 31, 2018. The Order must be served on the Tenant and may be filed and enforce in the B.C. Supreme Court.

Having been unsuccessful in her application, the Tenant's request to recover the filing fee is similarly dismissed.

Conclusion

The Tenant's Application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession effective March 31, 2018.

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: March 16, 2018

Residential Tenancy Branch