



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on April 30, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 29, 2018 (the "Two Month Notice"); and
- an order granting recovery of the filing fee.

The Tenants attended the hearing in person. The Landlord attended the hearing in person and acted as agent for the current owner. The current owner, R.R., also attended the hearing. All giving oral testimony provided a solemn affirmation.

The Tenants testified the Landlord was served with the Application package by registered mail on May 2, 2018. A Canada Post registered mail receipt was submitted in support. The Landlord acknowledged receipt. The Landlord testified that documentary evidence was served on the Tenants in person on June 12, 2018, although the Tenants testified it was received the next day. No issues were raised during the hearing with respect to service or receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were specifically asked to refer me to documents upon which they intended to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was directed. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Two Month Notice was issued on the following basis:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

[Reproduced as written.]

However, the Landlord's evidence confirmed that the reason for ending the tenancy is so the owner can occupy the rental property to ensure her son, who lives with seizures and is on the autism spectrum, is closer to school and other supports. I find that the reason for issuing the Two Month Notice is clear, despite what was indicated. The Tenants confirmed they understood the reason the Two Month Notice was issued. Accordingly, pursuant to section 68 of the *Act*, I find it appropriate in the circumstances to amend the Two Month Notice to reflect the reason for ending the tenancy as follows:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

[Reproduced as written.]

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. Are the Tenants entitled to an order granting recovery of filing fee?

Background and Evidence

The Tenants occupy a unit in a 4-plex. Although the K.B. testified he has lived in the rental unit for about 20 years, the parties confirmed they entered into this new tenancy agreement when the Landlord sold the property earlier this year. Currently, rent in the amount of \$1,400.00 per month is due on the first day of each month.

The Landlord and current owner wish to end the tenancy. Accordingly, the Landlord issued the Two Month Notice, which has an effective date of June 30, 2018. According to the Landlord, the Two Month Notice was served on the Tenants, in person, on April 29, 2018. The Tenants' Application confirmed receipt on that date.

As indicated above, R.R. testified that she wishes to end the tenancy is so she can move into the rental unit to ensure her son is closer to school and supports. In support, the Landlord submitted a copy of an Autism Diagnostic Assessment Summary and a Neuropsychology Assessment Report. These reports confirm that R.R.'s son experiences seizures and is on the

autism spectrum. R.R. testified that the rental unit is only 5 minutes away from her son's school, whereas she currently rents a property 25 minutes away. She testified the change will make a significant difference in her life and the life of her son, and that it is crucial for her family. R.R. also testified that she has already given notice to end the tenancy where she currently resides and would move in tomorrow if possible.

On behalf of the Tenants, K.B. testified that he doubts the legitimacy of the Two Month Notice. He advised that he received a similar notice about a year ago. In support, the Tenants submitted a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 28, 2017, which was issued by the landlord at the time. K.B. also testified that other tenants in the rental property were also given notices to end tenancy, but did not submit documentary evidence in support.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the Two Month Notice was issued on the basis that the Landlord intends in good faith to occupy the rental unit. The Application confirmed, and I find, that the Tenants received the Two Month Notice on April 29, 2018.

The Tenants submitted that they doubt the legitimacy of the Two Month Notice, testifying they received a similar notice from a previous landlord. This suggestion that the Landlord did not act in good faith requires an analysis of good faith.

Policy Guideline #2 provides direction when addressing a claim that a party has not acted in good faith. It states:

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 legislation or a tenancy agreement. 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 BC Supreme Court found 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. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- *a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));*
- *a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or*
- *a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).*

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

[Reproduced as written.]

In this case, I have considered the evidence and submissions of the parties. I have also considered the application of Policy Guideline #2 to these circumstances. However, I find it is more likely than not that the owner honestly intends to use the rental unit for the stated purpose. R.R.'s testimony, which I accept, confirmed that she wishes to move into the rental unit so she can more effectively care for her special needs child. I also accept that she has provided notice to vacate her current home. On the other hand, the Tenants' submissions were not sufficiently supported by documentary evidence. The notice to end tenancy dated May 28, 2017, was issued by a previous landlord who is not a party to these proceedings. In addition, there was no documentary evidence submitted in support of the claim that every unit in the rental property has received a notice to end tenancy. Accordingly, I find that the Tenants' Application to cancel the Two Month Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession to the landlord, as long as the notice to end tenancy complies with the form and content requirements of section 52 of the *Act*. The language in the *Act* is mandatory. Having reviewed the Two Month Notice, I find it complies with the requirements of section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on June 30, 2018, at 1:00 p.m. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 21, 2018

Residential Tenancy Branch