



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenants' application pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant BB (the tenant) confirmed that she and her young son received the 2 Month Notice posted on their door by the landlord on April 27, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed them a copy of the tenants' dispute resolution hearing package on May 17, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters, documents and the testimony of the parties, not all details of the respective

submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

On May 19, 2017, both parties signed a one-year fixed term tenancy agreement for a tenancy that was to run from June 1, 2017 until May 31, 2018. On this standard agreement, there was no indication that the tenants had agreed to vacate the rental unit at the expiration of the fixed term. Based on the landlord's selection of June 30, 2018, as the effective date of the landlord's 2 Month Notice, this tenancy has continued as a month-to-month tenancy as of June 1, 2018. Monthly rent for this basement suite below the landlord's own living quarters is set at \$1,150.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$575.00 security deposit paid on May 19, 2017.

The landlord's 2 Month Notice entered into written evidence by the tenant, identified the following reasons for seeking an end to this tenancy:

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

The landlord presented written evidence, supported by sworn testimony that her estranged spouse has resigned from his employment overseas, has accepted a position with a company in the landlord's community, and plans to reside in the basement suite of the rental property.

The landlord and the couple's six year old daughter reside upstairs in a three bedroom home above this basement rental suite. The landlord's parents have visited the landlord periodically and plan to return again for a lengthy visit, occupying the third bedroom in the landlord's dwelling.

The parties agreed that the tenant had paid full rent for June and July 2018, but that both parties understood that the status of the tenancy remained in question until a determination had been made by an arbitrator appointed under the *Act* with respect to the tenants' current application to cancel the 2 Month Notice. As the landlord's estranged husband is scheduled to arrive from overseas on July 28, the landlord said that she would have to arrange for accommodations for him until July 31, the date when the landlord's acceptance of rent for July 2018 would end this tenancy if the tenants' application were dismissed. The landlord also acknowledged that the tenants were entitled to compensation equivalent to one month's rent as a result of having received the landlord's 2 Month Notice.

The landlord's written evidence included a copy of her estranged husband's April 15, 2018 letter of resignation from his position with a company in China effective as of June 29, 2018. The landlord's estranged husband attached a translation of this letter of resignation. The landlord also entered into written evidence a copy of her estranged husband's March 30, 2018 offer of employment with a locally based company that is to take effect on September 3, 2018. In addition, the landlord's estranged husband provided a written statement in which he confirmed his intentions to move into the basement suite, where he could be available to provide parenting assistance for the couple's six year old daughter. He added that this living arrangement would enable him to "avoid embarrassment facing (his spouse) day and night."

The landlord entered written evidence and sworn testimony that she had been to visit her estranged husband overseas and he had returned to her community four times over the past two years when they had been separated. He had stayed up to two weeks in hotels and bed and breakfast facilities during these visits. The landlord maintained that he had not stayed in the landlord's home during these visits. The landlord provided evidence that the landlord and her estranged husband could not live together "for now." Although she remained hopeful that at some point she and her estranged husband and daughter might be able to reside in the same home, they would have to see how this arrangement with him living downstairs would work. She maintained that this was not a temporary arrangement and rejected the tenant's assertion that there was no reason why the landlord's spouse could not live in the third bedroom in the landlord's home. The landlord said that her parents were planning to return from overseas in September and would be using that bedroom.

The landlord gave evidence that the landlord's estranged husband remains a co-owner of this property. The landlord testified that he has been contributing to the mortgage, even though they separated two years ago. Based on the after tax salary that the landlord's spouse will be receiving upon his return to Canada, he would be unable to continue contributing to their mortgage and rent an apartment elsewhere. As the landlord maintained that their relationship was such that the landlord's estranged spouse could not reside with the landlord in the upstairs with the landlord and the couple's daughter, the only viable alternative was for the landlord's estranged spouse to occupy the basement suite where the tenant and her son currently reside. As the landlord's estranged spouse remains a co-owner of the property, the landlord maintained that the 2 Month Notice had been issued for valid reasons.

The tenant provided written evidence and sworn testimony in which they called into question the landlord's true motivation for seeking an end to this tenancy. The tenant entered written evidence regarding a number of disputes that had arisen during the course of this tenancy, including complaints about noise from both parties, as well as the tenant's complaints about the landlord's provision of heat to this rental unit. The tenant maintained that the landlord was attempting to circumvent provisions in the *Act* that would limit the landlord from seeking increased market rent at the expiration of the initial one-year fixed term tenancy. The tenant claimed that it was not coincidental that the landlord issued the 2 Month Notice shortly after they realized that they could not force the tenant to sign a new fixed term tenancy agreement for rent in excess of the amounts allowed pursuant to the *Act*. The tenant testified that the landlord's primary motivation in ending this tenancy was to obtain higher monthly rent than would be allowed once the initial one-year fixed term was over.

The tenant also questioned why the landlord's estranged husband could not reside in one of the three bedrooms in the landlord's part of this property as opposed to requiring the tenant and her son with special needs to relocate. The tenant noted that she had overcome serious obstacles in obtaining authorization from the local School District to let her son attend a nearby school, which allowed him to walk to school. The tenant maintained that both the landlord and her estranged husband had referred to the temporary nature of the estranged husband's proposed occupancy of the basement of the rental unit. The tenant did not believe that she and her son should be evicted on the basis of what the tenant asserts is a temporary arrangement to circumvent the rent increase provisions of the *Act*.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that her estranged husband, a co-owner of this property who continues to contribute to the mortgage payments, intends to return to the community and occupy the tenants rental unit.

According to subsection 49(8) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenants were deemed to have received the 2 Month Notice on April 30, 2018, and filed their original application on May 10, 2018. Therefore, they are within the 15 day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

In this case, the tenant claimed that the landlord is not acting in good faith. Residential Tenancy Branch Policy Guideline 2 addresses the matter of good faith in the following terms:

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...

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...

Although there have been disputes between the parties, neither party entered evidence of either one having applied for dispute resolution regarding these disputes. There is no record of the landlord having attempted to end this tenancy on other grounds. While the tenant contacted the RTB for assistance with this tenancy in the past, there was no evidence produced that the landlord was ordered to comply with the Act or the terms of their tenancy agreement by an arbitrator in response to an application by the tenant. When the tenant raised concerns about various features of this tenancy, it appears that the landlord took some form of corrective action. I find the examples provided by the tenant do not constitute sufficient reason to conclude that the landlord had ulterior motives for ending this tenancy and that the landlord was not in good faith ending this tenancy for the purpose of opening this space for use by her estranged husband, the co-owner of this property.

I find that the landlord has provided sufficient written evidence supported by sworn testimony that her estranged spouse, a co-owner of this property, has in fact ended his

employment overseas, purchased a one-way ticket to return to this community and will be commencing employment with a company in this community. While the landlord lives in a three bedroom home above the tenants` rental unit, I find that the landlord has provided an adequate explanation as to why the third bedroom in her home would not be suitable for her estranged husband, who is returning to assist with the parenting of their young daughter who stays in their second bedroom. The landlord`s third bedroom will be used soon by the landlord`s parents who will be visiting again from overseas.

Under these circumstances and based on a balance of probabilities, I find that the landlord has provided adequate evidence as to why the landlord`s estranged spouse would find it financially difficult to continue contributing to their joint mortgage and rent premises elsewhere in their community. Given the fragile nature of the relationship between the landlord and her estranged spouse and their desire to have him resume parenting duties from a nearby location, I see no reason why the landlord`s estranged spouse, a co-owner of this property, should not be allowed to occupy the tenants` rental unit once a valid 2 Month Notice has taken effect. While I realize this sequence of events has presented difficulties for the tenant and her young son, the landlord and her estranged spouse, co-owners of this property, have every right to occupy the premises in the way that best suits the needs of their family once vacant possession of the rental unit has been obtained through the proper legal mechanism.

I believe the primary motive of the landlord in issuing this 2 Month Notice is for the reasons stated in that Notice, and therefore I find the landlord has met the requirements of having acted in “good faith” in issuing the 2 Month Notice. For these reasons, I dismiss the tenants` application to dismiss that Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

As I find that the landlord's 2 Month Notice complies with the requirements of section 52 of the *Act* as to form and content, this tenancy would normally have ended on June 30, 2018, the effective date identified in the landlord's 2 Month Notice. As rent has been accepted by the landlord for the month of July 2018, I issue the landlord an Order of Possession to take effect by 1:00 p.m. on July 31, 2018.

As the landlord has not yet provided the tenant with the equivalent of one month's rent in accordance with section 51(1) of the *Act* as a result of issuing the 2 Month Notice, I order the landlord to pay the tenant \$1,150.00, immediately.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on July 31, 2018. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In accordance with sections 51(1), 62(3) and 67 of the *Act*, I issue a monetary Order in the tenant's favour in the amount of \$1,150.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: July 11, 2018

Residential Tenancy Branch