



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This decision pertains to the Tenants' application for dispute resolution made on June 12, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenants seek an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), and a monetary order for recovery of the filing fee.

The Landlords, the Landlord's translator, the Landlord's son (the "Agent"), and one of the Tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties did not raise any issues in respect of service of the Notice of Dispute Resolution Proceeding material.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice that complies with the Act.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. If the Tenants are not entitled to an order cancelling the Two Month Notice, are the Landlords entitled to an order of possession?
3. Are the Tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Tenants are long-term tenants, having moved into the rental unit (a house) in the summer of 2012. They are a young family and have one young child. The tenancy commenced September 1, 2012, monthly rent was \$1,400.00, due on the first of the month, and the Tenants paid a security deposit of \$700.00

The Landlords live in the lower level of the house, and are an elderly couple with deteriorating health. The Tenants and Landlords have had a good, long-term relationship. Because of the Landlords' declining health, however, they wish to move upstairs into where the Tenants currently live, because (as submitted by the Agent) there is more sunlight, better circulation, fresh air, and that "it is a better environment."

The Agent testified that the Landlords issued the Two Month Notice on May 31, 2018, served it in-person on the Tenants on that date, and with an effective end of tenancy date of July 31, 2018. The ground on which the Two Month Notice was issued, as indicated on page 2 of the Two Month Notice, is that "The rental unit will be occupied by the landlord or the landlord's close family member". The Two Month Notice was presented and submitted into evidence by the Tenants.

The Tenant testified, and submitted evidence to support her position, the reasons for the Two Month Notice being issued differ from previous reasons given. The Tenant submitted and argued that she and the other Tenant have concerns regarding the underlying ground on which the Landlords issued the Two Month Notice. For example, the Landlords previously indicated that their son, the Agent, would be moving to Canada from overseas and would be moving into the house. However, there was no set timeline in this regard, and no Two Month Notice was ever issued on that basis.

The Tenant also raised the issue of why the Landlords did not provide a less formal notice that they intended to move into the house, such as a casual "head's up" as it were, until the Two Month Notice was issued. The Agent explained that they were pondering their options in the face of the Landlord's deteriorating health.

Ultimately, the Agent submitted that the decision was made for the Landlords to move into the rental unit due to the mother's failing health. The Landlords did not comment on the son moving in, and the Agent said that there was no intention of him moving in.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 49(3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenants received the Two Month Notice on May 31, 2018, in-person.

The Agent testified that his mother, one of the Landlords, suffers from deteriorating health necessitating a move into the rental unit. The Landlords submitted into evidence medical documentary evidence supporting their assertion that the Landlord has declining health.

While the Tenant did not question the current reason given by the Landlord, she did call into question why that reason is now different than previously given during conversations between the Tenants and the Landlords, and the Agent. That is, that the son—the Agent—would be moving into the rental unit. Regardless, either a close family member or the landlords themselves would be moving into the rental unit, and the operation of section 49(3) remains the same.

The Tenant's questioning of the Landlords' changing reasons does, however, raise the issue of good faith.

"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.

In this case, the Landlords issued the Two Month Notice for the stated reason of having the Landlords move into the rental unit. The Agent testified about how moving into the rental unit would be beneficial for his mother. The documentary evidence supports the testimony that the mother is not doing well, health-wise. There is no evidence to suggest that the Landlords intend to do anything other than move into the rental unit.

As such, I find that the Landlords have met the onus of establishing the ground on which they issued the Two Month Notice, and that they were acting in good faith in so doing.

As the Landlords have met their onus of proving the ground on which they issued the Two Month Notice, I dismiss the Tenants' application for an order cancelling the Two Month Notice, without leave to reapply. The Two Month Notice, dated May 31, 2018, and effective July 31, 2018, is upheld.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application for dispute resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the Two Month Notice issued by the landlord on May 31, 2018 complies with the requirements set out in Section 52. As such, I hereby grant the Landlords an order of possession effective July 31, 2018.

I remind the Landlords of their offer, and the related discussions between the parties during the hearing, to give the Tenants sufficient, additional time to clean the rental unit.

As the Tenants are unsuccessful in their application I dismiss their claim for a monetary order for recovery of the filing fee, without leave to reapply.

Conclusion

I dismiss the Tenants' application for an order to cancel the Two Month Notice, without leave to reapply.

I grant the Landlords an order of possession of the rental unit, effective July 31, 2018. This order must be served on the Tenants. This 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 Act.

Dated: July 23, 2018

Residential Tenancy Branch