



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's application pursuant to 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) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord ADD (the "landlord") primarily spoke on behalf of the landlords. The tenant was assisted by counsel.

As both parties were present service of documents was confirmed. The tenant testified that they were served with the 2 Month Notice on or about May 22, 2018. The landlord testified that they were served with the tenant's application for dispute resolution dated June 5, 2018 and evidentiary materials. The landlord did not submit any evidence. Based on the undisputed testimonies of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy began approximately 4 years ago. The current monthly rent is \$1,230.00 payable on the first of each month along with 40% of the utilities for the building. The rental unit is a 3-bedroom main floor of a detached home. There are two other rental unit occupied by other tenants.

The landlord testified that the property owner HVD is one of the named respondents and the landlord's father. The landlord currently lives in a basement suite in the family residence. The suite is a 1-bedroom unit and the landlord testified that it provides limited space to entertain guests, store items and conduct his home business. In addition the landlord testified that he is tasked with providing maintenance services for the rental building.

The landlord issued the 2 Month Notice intending to personally move into the rental unit. The landlord said that moving out of the family basement and into the rental unit makes sense as it provides additional space, provides privacy from family, and allows the landlord to attend to the needs of the property more readily. The landlord testified that the rental unit was chosen among the properties owned by the landlord, HVD as it provides the best layout and space for his needs, and that he is scheduled to inherit the rental building so in effect it is "his property" to maintain and care for. The landlord explained the timing for the move as his work duties have increased and the need for a proper workspace at home has become more pressing.

The tenant raised several questions about the landlord's intention to move into the rental unit. The tenant testified about several conversations she has had with the property owner regarding the low rent paid and the possibility of charging a higher rent for the unit. The tenant submits that the rental unit has not been renovated for close to a decade and that neighboring units were recently renovated and believed to be rented out at a higher rate.

The property owner testified that the conversations with the tenant regarding the possibility of charging a higher rent were misunderstood. The property owner said that he informed the tenant that while he was told that it was possible to charge a higher monthly rent for the unit, he had no intention of doing so. The property owner said that he valued long-term tenants and has charged a reasonable rent which covers their costs without being excessive. The landlord and property owner both testified that they have no intention of renting out the rental unit to a new tenant at a higher monthly rent. The property owner said that he wished his son, the landlord ADD, to move into the

rental unit as it would give him more independence and privacy compared to living in the family home's basement suite.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlords intends in good faith to occupy the rental unit.

The tenant questions the intention of the landlord and raises a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that 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.

Policy Guideline 2 reads in part as follows:

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.

While the landlord has provided little documentary evidence, I find there is sufficient evidence through the testimony of the parties that the landlord intends, in good faith, to occupy the rental unit. Both the landlord and the property owner gave cogent, consistent testimony regarding their intentions and the factors which led to their decision. I found the explanations provided by the landlord addressing the issues raised by the tenant to be believable and reasonable.

The property owner explained that any earlier discussion about the possibility of renting out the suite for a higher rent was not a declaration of their intentions. I find this explanation reasonable. I find that it would be reasonable to expect that if a landlord intended to end a tenancy and rent the unit for a higher amount they would not announce this to an existing tenant. If a landlord informs a tenant that their suite could be rented at a higher amount, it is reasonable to expect that would be done as part of negotiations to raise the rent. There is no evidence that the landlord attempted to raise the rent for this tenancy beyond the allowable amount. I accept the landlord's explanation that any discussion about the amount of rent possible was purely theoretical.

I find the tenant's submission that similar units in the area garner a much higher rent to not be determinative. The tenant's submissions, including online postings showing similar units commanding a higher monthly rent, does not raise or demonstrate that the landlord has ulterior motives in issuing the Notice to End Tenancy. The landlord testified that they intend to occupy the rental unit and provided reasons for the decision having been made. I find the simple fact that it may be possible to rent the unit for a higher rate does not refute the landlord's evidence or establish that there is a lack of good faith in issuing the Notice.

I find the balance of the tenant's submissions regarding their personal circumstances, medical condition, and inconvenience of moving to be irrelevant to the issue at hand.

I find on a balance of probabilities that I am satisfied that the landlord will occupy the rental unit. Therefore, I dismiss the tenants' application to cancel the landlords' 2 Month Notice.

Section 55(1) of the *Act* reads in part 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..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

As I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the Act, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. As the effective date of the 2 Month Notice has passed, I issue an Order of Possession effective two days after service.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is dismissed.

I issue an Order of Possession to the landlord, effective two days after service. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed 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: July 24, 2018

Residential Tenancy Branch