



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 landlord pursuant to section 72.

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 the tenant's son (the agent) confirmed that their father was handed the 2 Month Notice by the landlord's representative on September 29, 2018, I find that the tenant was 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 tenant's dispute resolution hearing package on October 4, 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? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The agent testified that this tenancy for a four bedroom main floor rental unit with 2 1/2 baths in two unit dwelling commenced on January 1, 2017. Although the agent said that they did not believe that there was a written tenancy agreement established at that time with the then owner of this property, the agent said that the tenant understood that this was to be a long-term tenancy. In the absence of any written tenancy agreement, this was a month-to-month tenancy and not a fixed term tenancy. The landlord purchased the property from the previous owners on December 20, 2017. After some communication between the parties with respect to the proper method of paying for utilities for this two unit dwelling, the parties eventually signed a periodic tenancy agreement in which the tenant pays \$1,500.00 in rent by the first of each month, plus utilities. The landlord continues to hold \$456.83 of the tenant's original \$750.00 security deposit paid by the tenants to the former owner of this property.

On May 20, 2018, the landlord provided the tenant with a hand-written notice to end this tenancy. As notices to end tenancy must be on approved Residential Tenancy Branch (RTB) forms, the tenant correctly advised the landlord that this notice to end tenancy was invalid.

On July 1, 2018, the landlord issued a 2 Month Notice on the approved RTB form, seeking an end to this tenancy by August 30, 2018. The tenant applied to cancel that 2 Month Notice. On August 30, 2018, an arbitrator appointed pursuant to the *Act* heard evidence from both parties and allowed the tenant's application to cancel the 2 Month Notice of July 1, 2018 in a September 19, 2018 decision (see reference to that decision above). That decision, a copy of which the tenant included with their written evidence for this hearing, reads in part as follows:

...In this case, the landlord has provided minimal evidence to prove that he and his family intend to reside in the rental unit. The landlord did not provide any documentary evidence, such as real estate sales documents, nor any testimony, to indicate that they have sold their prior residence. Although testimony was provided that the landlord sold his business in Northern B.C., no documentary evidence was submitted to support this testimony. The landlord submitted into evidence a copy of the tenancy agreement for his current temporary accommodation, but did not call on his current landlord, or any other third party to provide testimony to confirm that he is residing in the temporary accommodation awaiting to move into the rental unit...

I find that the lack of documentary evidence submitted by the landlord to support their testimony that they have relocated from their prior residence with the intention to reside

in the rental unit, in conjunction with the landlord's failed attempts to renegotiate the tenancy agreement with the tenant, which appear to have led to the landlord issuing the tenant with a notice to vacate the property, lend sufficient support to the tenant's claim that the landlord has not issued the Two Month Notice in good faith.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has not provided sufficient evidence to establish that he that he intends in good faith to do what he said on the Two Month Notice and to establish that he does not have another purpose or an ulterior motive for ending the tenancy.

As such, the landlord's Two Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act...

On September 29, 2018, the landlord issued a new 2 Month Notice seeking an end to this tenancy by November 30, 2018. This new 2 Month Notice identified the same following reason for seeking an end to this tenancy as was identified in the previous 2 Month Notice of July 1, 2018:

- *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...*

For this hearing, the landlord provided considerable written evidence to demonstrate that they sold their business in Northern B.C. on July 28, 2018, moving to the Lower Mainland where the rental property is located, and entered into two short term residential tenancies from August 1, 2018 to September 30, 2018, and their present rental accommodations from September 30, 2018 until November 30, 2018. At the hearing the landlord, their son and their advocate gave sworn testimony and provided written evidence that the landlord wishes to move into the rental unit because they have to leave their cramped basement suite where eight people, including two 80 year-olds, are currently residing by November 30, the effective date of the most recent 2 Month Notice they issued to the tenant. The landlord's written evidence also included a letter from the landlord's employer, proof that one son was working as an apprentice for an electrical company in the Lower Mainland, proof of Drivers Licence and Health Services cards showing changes of address, proof of their purchase of self storage near the rental property, proof of rental of a vehicle for moving which occurred in July 2018, proof of the ending of their safety deposit box in Northern B.C. and purchase of a new safety deposit box near the rental unit.

The tenant's application to cancel the current 2 Month Notice included concerns about the accuracy of a signature on the 2 Month Notice and the allegation that the mailing address shown on that Notice was incorrect. The agent said that the tenant is looking for alternative accommodation, but needs more time to relocate the two families that are living in the rental unit. The agent said that after receiving the September 19, 2018 decision, the tenant believed that the landlord would not be successful in obtaining possession of the rental unit on the basis of a new 2 Month Notice issued ten days later.

Analysis

Section 49(3) of the *Act*, as noted below, allows a landlord to end a tenancy for their own use:

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.

As the notice was issued under section 49(3) of the *Act*, the tenant had 15 days to dispute the notice pursuant to section 49(8)(a) of the *Act*. Since the tenant applied to cancel the 2 Month Notice within a few days of receiving that Notice, the tenant's application was well within the 15-day time limit set out in the *Act*.

Residential Tenancy Policy Guideline #2 - Ending a Tenancy: Landlord's Use of Property explains the 'good faith' requirement in section 49(3) of the *Act* and states in part at page two to three:

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));*

...

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...

When the “good faith” intent of the landlord is brought into question the burden is on the landlord to establish that they truly intend to do what the landlord indicates on the Notice to End, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy, as the landlord’s *primary* motive.

As noted at the hearing, decisions of arbitrators appointed pursuant to the *Act* are not binding on future applications, nor do they create precedent which must be followed in subsequent hearings. Each hearing is considered on its own merits, and must take into account the situation as then presented, and with respect to notices to end tenancy, the situation as it existed at the time of the issuance of the notice in dispute.

In this case, my task is to assess the extent to which the landlord had valid grounds to obtain possession of the rental unit on the basis of the 2 Month Notice issued on September 29, 2018, and was acting in good faith in issuing that Notice.

On this basis, much of the evidence considered by the arbitrator who issued the decision on September 19, 2018, taking into account the situation as it existed on July 1, 2018, and as presented in sworn testimony and written evidence submitted by the parties for that hearing is irrelevant to the situation currently before me. This is because I find that much has changed since the arbitrator considered the previous application with respect to the 2 Month Notice of July 1, 2018. For example, on July 1, 2018, the landlord's business sale had not yet been finalized, the landlord had not yet moved to the Lower Mainland, which occurred late that month, and the landlord had not entered into two short term tenancies, awaiting the end to the tenancy currently before me. The landlord was not living in cramped conditions in a short term rental in a basement suite that is to end November 30, 2018. Neither the landlord nor his son were working in the

Lower Mainland when the landlord issued the 2 Month Notice on July 1, 2018. They were by the time the 2 Month Notice of September 29, 2018 was issued.

In addition to the circumstances, which I find are clearly different on many counts since the July 1, 2018 2 Month Notice was issued, the landlord has supplied ample, mostly undisputed written evidence documenting many of the deficiencies identified by the previous arbitrator as the grounds for allowing the tenant's application to cancel the July 2, 2018 Notice to End Tenancy.

I attach little weight to either of the reasons cited on the tenant's application to cancel the 2 Month Notice before me. As noted at the hearing, the landlord can appoint any representative to actually sign a 2 Month Notice on their behalf, which may or may not have occurred with respect to the current 2 Month Notice. I also see no significance to whether written evidence from the landlord identified different addresses on a tenancy agreement and a statement of enrollment of the landlord's son at a local educational institution. The educational institution's records may very well not have been current and the agent did not dispute the landlord's sworn testimony and written evidence that they have moved yet again to the second of two short term rentals while they wait for the tenant to vacate the property the landlord owns and where the tenant still resides.

While the agent noted that the tenant is encountering difficulty in identifying alternate accommodations, the landlord has given the tenant the required notification required under the *Act* in identifying November 30, 2018, as the effective date for the 2 Month Notice of September 29, 2018. I also note that the tenant has been aware that the landlord was seeking to move into this rental unit for many months prior to the landlord's issuance of the most recent 2 Month Notice.

As I find that the landlord has clearly documented that they have moved from Northern B.C., that their large family has been living in short tenancy agreements that are about to expire as they wait to gain access to this rental unit, and that they intend to reside in the tenant's premises for the purposes stated in the 2 Month Notice, I find that the landlord has acted in good faith in issuing the 2 Month Notice. For these reasons, I dismiss the tenant's application to cancel the landlord's 2 Month Notice of September 29, 2018.

As the tenant was unsuccessful in this application, I also dismiss their application to recover their filing fee.

As this tenancy is about to end, the parties should be aware of the following wording of section 51(1) of the *Act*, which reads as follows, and requires a landlord issuing a 2 Month Notice to compensate the tenant the equivalent of one month's rent.

51 *(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or after the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...*

In the event that this has not yet happened, the landlord is responsible for ensuring that the tenant receives this amount of compensation under the *Act*.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on November 30, 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.

I dismiss the tenant's application to recover the filing fee.

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: November 16, 2018

Residential Tenancy Branch