



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 49 of the Act;
2. an order regarding a disputed rent increase; and,
3. an order for compensation for the filing fee.

A dispute resolution hearing was convened on January 22, 2019 and the landlords and the tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. I note that the legal names of the two landlords were corrected and are reflected on the cover page of this Decision.

The parties did not raise any issues in respect of the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are 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's notice to end tenancy complies with the Act.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to an order in respect of a disputed rent increase?
4. Are the tenants entitled to compensation for the filing fee?

Background and Evidence

The landlord (D.S.) testified that the tenancy started at some time prior to him taking over as the landlord and owner of the property in which the rental unit is located. The tenant clarified that their tenancy commenced on September 16, 2011. Monthly rent was originally \$700.00, on the basis that tenant A.C. was acting as a property manager for the then-landlord. In January 2018, the situation changed, the tenant no longer acted as property manager, and the monthly rent was then \$840.00. I note that there was no copy of the written tenancy agreement submitted into evidence

On November 30, 2018, the landlord issued the Notice and served it by hand to the tenants on that date. The Notice, a copy of which was submitted into evidence, stated that the effective end of tenancy date is January 31, 2019, and that the reason the tenancy is ending is because the rental unit will be occupied by the landlord or the landlord's close family member. The landlord testified that the house that he currently resides in used to be his, but he sold it, and then rented it from the new owner at \$3,000.00 a month. Unfortunately, the landlords' landlord (that is, the owner of the landlords' former house) issued the landlords with a Two Month Notice to End Tenancy for Landlord's Use of Property. This notice was submitted into evidence and indicated that the landlord was to vacate the house by January 31, 2019. The notice was issued on or about November 15, 2018, and indicated that the purchaser (that is, the landlord's landlord) intends in good faith to occupy the rental unit. Also submitted into evidence was a copy of a Contract of Purchase and Sale, in which the names of the buyers are the same as that in the two-month notice given to the landlords.

The landlord testified that he has nowhere else to live except in the rental unit, and that he needs more space, given that he lives in a five-bedroom house. He further stated that, in response to the written submissions of the tenants, he did not issue the Notice because he intends to raise the rent.

The tenants testified that the landlords (and the landlord's son) started doing renovations to the building shortly after purchasing it, and more so in June, July and

August 2018. During this time, the landlord (or the landlord's son) said something to the effect of "we're [that is, the tenants] not paying enough [rent]."

On October 31, 2018, the landlord's son sent a text to the tenants in which the son stated, "as of tomorrow rent is \$1500/month." A copy of this text was submitted into evidence. In response, the tenants sent a letter to the landlord in which they reminded the landlords about their legal obligations in respect of raising rent.

The tenants argued that the timing of the Notice is peculiar, given that on one day, October 31, the son purportedly attempted to raise the rent (by 79%), and then received the Notice on November 30. They submitted that the only reason they are being evicted is so that the landlords can raise the rent. In support of this argument they submitted a Craigslist advertisement for the rental unit (posted at some point before December 6, 2018) in which the rental unit is listed for \$1,500.00. They argued that before the rent issue, they did not have any problems with the landlords, and otherwise said that they got along fine with them.

The landlord spoke highly of the tenants and reiterated that the rent is the driver behind the eviction. Rather, he must move by the end of the month and simply needs a place to live. The tenants in rebuttal pointed out that there was a rental unit across the hall that sat vacant for 2-3 months, until someone moved in around the end of December 2018 or beginning of January 2019. The landlord stated that the new tenants moved into the neighbouring rental unit in October 2018.

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.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice is based.

In this case, the landlord testified that the Notice was issued under section 49 (1) of the Act, which 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." He testified that he must move by January 31 because *he* was given a Two Month Notice by *his* landlord. The documentary evidence submitted

corroborates his testimony and supports his argument. I note that the tenants did not directly dispute or raise any issues with respect to the landlord's own two-month notice.

However, the tenants disputed the ground on which the Two Month Notice was issued, submitting that it was based on the landlords' actual intentions to raise the rent. The tenants are, in effect, disputing the "good faith" requirement of this section, which is the question to which I must now consider.

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. (See pages 1 and 2 of *Residential Policy Guideline 2. Good Faith Requirement when Ending a Tenancy*.) Moreover, 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. A landlord's intentions might be documented by, for example, a Notice to End Tenancy at another rental unit, or, an agreement for sale and the purchaser's written request for the seller to issue 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. The landlord must 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.

Based on the timing that the landlords received their Two Month Notice (November 15, 2018) and when the tenants received their Two Month Notice (November 30, 2018), and based on the testimony of the landlord in respect of why he intends to move into the rental unit, I find that the totality of evidence points to the veracity of the landlord's claims that they truly intend to move into the rental unit.

With respect to the issue of the purported rent increase, I do not find that the timing of the Notice is such that there is a link between the (rather amateurish attempt, and completely inconsistent with the requirements to increase rent under the Act, I should say) rent increase text notification of October 31 and when the Notice was issued on November 30. While the landlords may very well intend, and have intended, to rent the rental units out for \$1,500.00 a month (as evidenced by the Craigslist ad), this in and of itself does not necessarily suggest that this is an ulterior motive by the landlord. If it were the case that the landlords did not need to move out of their rental unit, and there was not supporting documentary evidence (such as a Two Month Notice), then the matter would perhaps be different. In this case, however, I do not find the one text

message about a rent increase and some earlier discussions about the rent are sufficiently probative to negate the intent of the landlords for ending the tenancy. I find that the rent is \$840.00, and not any other amount that the landlord's son may suggest that it ought to be.

Taking into consideration all the oral testimony and the documentary evidence presented before me, I find that the landlords have proven on a balance of probabilities that they intend in good faith to occupy the rental unit. Therefore, I uphold the Two Month Notice issued November 30, 2018 and issue an order of possession to the landlords pursuant to section 55 of the Act.

I decline to award the tenants compensation for the filing fee.

As an aside, I caution the landlords that any failure to occupy the rental unit as intended may give rise to compensatory action by the tenants under section 51 of the Act.

Conclusion

I grant the landlords an order of possession, which must be served on the tenants and is effective at 1:00 P.M. on February 16, 2019. 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: January 22, 2019

Residential Tenancy Branch