



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M FFT

Introduction This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property ("4 Month Notice") pursuant to section 49 of the *Act*; and
- Return of the filing fee pursuant to section 72 of the *Act*.

The tenant and the landlord attended the hearing. The tenant was assisted at the hearing by his daughter, W.P., while the landlord was represented at the hearing by her husband A.H. (the "landlord"). Both were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution and evidence package and is found to have been duly served in accordance with sections 88 & 89 of the *Act*. The landlord confirmed no evidence was sent to the tenant or submitted at the hearing.

Issue(s) to be Decided

Can the tenant cancel a landlord's 4 Month Notice to End Tenancy?

Can the tenant recover the filing fee?

Background and Evidence

The tenant's daughter explained that her father began occupying the property approximately 18 years ago. She said he paid a monthly rent of \$550.00 and she suspected no security deposit was paid.

On approximately December 14, 2018 the tenant received a 4 Month Notice to End Tenancy for Landlord's Use of Property ("4 Month Notice"). The notice cited the following reasons for its issuance:

- *I am ending your tenancy because I am going to convert the rental unit for use by a caretaker, manager or superintendent of the residential property*

Below this portion of the application the landlord indicated that "No permits and approvals are required by law to do this work" and "Use by landlord and family for summer vacations accommodation."

The tenant's daughter questioned the landlord's motivation in issuing the 4 Month Notice. The tenant's daughter explained that the landlord had issued two previous Notices to End Tenancy. Specifically, in July 2018 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property which the tenant disputed. This notice was dismissed by an arbitrator with the Residential Tenancy Branch ("RTB") following the landlord's non-attendance at the hearing.

A second Notice to End Tenancy was given to the tenant in September 2018 but this was not in the official RTB form and was therefore not considered by the tenant to be enforceable. No further action was taken by either party related to this September 2018 Notice.

The tenant's daughter said she suspected the landlord intended to move tenants (R.S. & A.S.) from another property into the rental unit currently occupied by her father. The tenant said this reason had previously been cited by the landlord when issuing the 2 Month Notice to End Tenancy in July 2018. Furthermore, the tenant's daughter explained that this version of events had been corroborated by a conversation that took place between the tenant's neighbour and the landlord. As part of his evidentiary package the landlord submitted a signed and dated letter from this neighbour which stated in part as follows:

After giving [the tenant] notice, the landlord was selling the home where [R.S. & A.S.] resided. Then proceeding to move them [R.S. & A.S.] into [the tenant's] where A.S. would do a remodel...

The landlord acknowledged that previously his intention had been to move tenants R.S. & A.S. into the unit currently occupied by the applicant tenant; however, he said those reasons had now changed and he wished to use the property on his own and with his

family. The landlord said, "We want to use it for our kids and grandchildren. We want to use it for personal purposes as a summer place." The landlord then continued to explain that he planned on selling the property in the Fall of 2019 and wanted to occupy the property for six months and then sell both the property in question and the other property currently occupied by R.S. and A.S.

Analysis

Residential Tenancy Rule of Procedure 6.6 notes, "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 fact occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances that is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason why they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy."

In this case, the landlord explained he intended to use the property for his family's own use. The landlord said he wanted to occupy the property as a summer vacation property and then hoped to sell the property in approximately the Fall of 2019.

The tenant questioned the good faith of the 4 Month Notice issued and disputed that the property would be used for the reasons cited on the 4 Month Notice.

Subsection 49(6) of the Act states that a landlord may end a tenancy in respect of a rental unit where the landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest of intention with no ulterior motive. The landlord must honestly intend to use the rental 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 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 that they do not have an ulterior motive for ending the tenancy.

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After considering all of the oral testimony presented, and after having carefully reviewed the evidence submitted by the tenant, I find that the tenant was successful in cancelling the landlord's 4 Month Notice. During the hearing the landlord repeatedly emphasized that he was truly motivated by a desire to use the tenant's property for his own family's use during the summer and that eventually in the Fall of 2019 he hoped to sell the rental property. I find this difficult to reconcile with the 4 Month Notice served on the tenant which said the property was required because the landlord intended to:

- *convert the rental unit for use by a caretaker, manager or superintendent of the residential property*

I find very little information was presented by the landlord related to any intention to convert the rental unit for use as described on the Notice to End Tenancy. Furthermore, I find the fact the landlord had issued a prior 2 Month Notice to be an indication that the landlord has ulterior motives related to the issuance of the current 4 Month Notice. The landlord failed to identify reasons related to the property's need for a caretaker and provided a variety of reasons unrelated to the reason cited on the 4 Month Notice as to why he required use of the property. I find the reasons provided by the landlord, specifically that he intended to use the property himself and that he intended to sell the property to fall beyond the scope of the purposes stated on the notice to end tenancy issued to the tenant. For these reasons, I find the tenant was successful in his application to cancel the landlord's 4 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

As the tenant was successful in his application, he may withhold \$100.00 from a future rent payment on **one** occasion in satisfaction for a return of the filing fee.

Conclusion

The tenant was successful in his application to cancel the landlord's 4 Month Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion, in satisfaction for a return of 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: February 12, 2019

Residential Tenancy Branch