



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OLC

Introduction

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on March 05, 2019 the Application for Dispute Resolution, the Notice of Hearing, evidence the Tenant submitted to the Residential Tenancy Branch on February 28, 2019; and evidence the Tenant submitted to the Residential Tenancy Branch on March 03, 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents on March 17, 2019 and the evidence was accepted as evidence for these proceedings.

On March 21, 2019 the Landlord submitted a copy of the tenancy agreement to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on March 27, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 31, 2019 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on July 14, 2018;
- the current rent is \$850.00 per month;
- the rent has not increased since the start of the tenancy;
- the Tenant is still residing in the rental unit;
- on February 27, 2019 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by April 30, 2019;
- the Notice to End Tenancy declared that the tenancy was ending because the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse; and
- the Tenant is still living in the rental unit.

The Landlord stated that he purchased the rental unit on February 05, 2019. The Tenant stated that she understands the Landlord purchased this rental unit sometime after she moved into the unit.

The Landlord stated that he is currently living in another community; he wishes to move to this community for business reasons; and he intends to move into the rental unit.

The Tenant stated that she does not believe the Landlord intends to move into the rental unit because he offered to allow her to continue living in the rental unit if she agreed to increase the rent to \$1,150.00. In support of this submission the Tenant stated that:

- on February 22, 2019 she spoke with the Landlord in his office;
- at that time he asked her if she wished to continue living in the rental unit and she told him she would like to rent the unit for another year;
- he told her she could continue to live in the unit if she agreed to increase her rent to \$1,150.00;
- on the same day she spoke with the manager, whom she knows only as "Bev", and she told the manager the Landlord asked her to increase the rent;
- on the same day she spoke with a friend with the initials "L.T." and she told the friend that the Landlord asked her to increase the rent;
- on February 22, 2019 or February 23, 2019 she spoke with her previous landlord and told him that the Landlord asked her to increase the rent; and
- on February 22, 2019 she spoke with a male whom she refers to as Mr. "C" and she told him that the Landlord asked her to increase the rent.

The Tenant asked to call the male she referred to as Mr. "C" as a witness and she provided a phone number for that individual. I dialed that phone number on two occasions and on both occasions I was redirected to voice mail. The Tenant was advised that I was unable to contact this witness and that I would not, therefore, be able

to hear his testimony. The Tenant stated that she also has an email address for this witness and she was advised that an email address is not an acceptable method of having a witness join the teleconference.

The Tenant stated that she would like to call her former landlord as a witness. She provided a phone number for that individual but informed me that he is out of the country and would not be available to testify until May of 2019. She was advised that if her witness is not available to testify at the hearing today I would not be able to hear his testimony. As the witness could have dialed into this teleconference from any country or the witness could have submitted documentary evidence, I concluded that it would not be appropriate to adjourn this hearing to provide the Tenant with the opportunity to call this witness. In reaching this conclusion I was heavily influenced by the fact this hearing relates to continued possession of the rental unit and I find that it would be unfair to the Landlord to delay these proceedings.

The Tenant asked to call the manager she knows only as "Bev" and she provided a phone number for that individual. I telephoned that individual and she refused to participate as a witness in these proceedings. The Tenant was advised that since this witness was unwilling to testify I would not be able to hear her testimony.

The Witness for the Tenant stated that she is the Tenant's friend and that sometime in February of 2019 the Tenant told her that her Landlord wanted to increase the rent by \$150.00, effective March 01, 2019.

The Landlord stated that he met with the Tenant on, or about, February 22, 2019; he asked her if she wanted to continue living in the rental unit; she does not recall if she told him she wanted to live in the unit for another year; and at no time did he ask the Tenant to pay any additional rent.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if the the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy which declared that the Tenant must vacate the rental unit by April 30, 2019.

On the basis of the undisputed evidence I find that the Landlord plans to move into the rental unit.

By raising the issue of the rent increase she alleges the Landlord asked for in February of 2019, the Tenant has raised the issue of good faith.

Residential Tenancy Branch Policy Guideline #2, with which I concur, reads, in part:

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));
- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).

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.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy. (Emphasis added)

I find that the Landlord submitted no evidence to corroborate his testimony that he intends to move into the rental unit. For example, he did not submit a notice to his current landlord to establish that he is ending a current tenancy; he did not submit evidence that he has sold his current residence; nor he did not submit evidence that he has, or is attempting to, sublet/rent his current residence. As the Landlord has submitted no evidence to corroborate his testimony that he intends to move into the rental unit, I find that he has failed to meet the burden of proving that the Two Month Notice to End Tenancy was served in good faith.

I favour the testimony of the Tenant, who stated that the Landlord attempted to have her agree to a rent increase in exchange for continuing the tenancy, over the testimony of the Landlord, who stated that the parties did not discuss increasing the rent. I favour

the Tenant's evidence over the Landlord's evidence in this regard because it was corroborated by the Tenant's witness. Although I recognize that the Witness is somewhat biased by her friendship with the Tenant, the Witness's testimony was direct and forthright and was sufficient, in my view, serves to corroborate the Tenant's testimony.

As the Landlord has submitted insufficient evidence to establish that the Two Month Notice to End Tenancy was served in good faith, I grant the Tenant's application to set aside this Notice.

Conclusion

The Two Month Notice to End Tenancy is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

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: April 11, 2019

Residential Tenancy Branch