



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, MNDCT, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the four month Notice to End Tenancy dated March 26, 2019
- b. A monetary order in the sum of \$5000
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 4 month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenants reside on March 26, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on landlord as the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the four month Notice to End Tenancy dated March 26, 2019 and setting the end of tenancy for July 31, 2019?
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on May 2005. The present rent is \$980 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$392.50 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property

The landlord's representative gave the following evidence:

- There are 37 rental units in the rental property. She has been the manager of the rental property for 28 years. She has recently been diagnosed with cancer and is being treated for the disease.
- In the past she had people already living in the building who are willing and are capable to cover the duties required as an assistant manager, landscaper and maintenance staff. However, this is no longer the case.
- After three years of covering everything management has agreed to the hiring of an assistant manager.
- The present maintenance person has expressed a desire to discontinue his work.
- Her husband suffers from dementia and is in an extended care unit. In the past he carried out many of the management tasks. She is required to visit him on a regular basis and is absent from the rental property during those times.
- There have been no vacancies for 18 months. There was a recent vacancy in one of the units that was filled from the wait list. There was another vacancy that was not suitable. Both vacancies became available in April.
- The proposed assistant manager testified that she requires a rental unit as she is presently living with her daughter in Burnaby and she has a lengthy commute.
- It is proposed that she will be responsible for management responsibilities as an assistant and to give relief to the Manager.

The tenant gave the following evidence:

- There was a vacancy at the end of April that the landlord could have used for the Assistant Manager.
- There was a previous dispute with the landlord in which the landlord was required to make certain repairs and they were given 2 month abatement of rent.

- The owner told him at that time that if he does not like it he should leave.
- He submits the actions of the landlord are retaliatory in nature.
- The landlord told him he could no longer use cars (at a place they have washed cars for 14 years).
- He lost work for 5 days because of the problems. They suffered a loss of quiet enjoyment and stress and he is seeking a monetary order in the sum of \$5000.
- On cross examination the tenant admitted the previous arbitration order involved a settlement at the hearing. While the carpets have not yet been replaced the order provides that the landlord has until June 1, 2019 to replace the carpets..

The Law:

Policy Guideline # 2 includes the following:

C. GOOD FAITH

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.

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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.

Analysis:

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause based on a balance of probabilities.
- I accept the testimony of the Manager that her situation has changed in the last few years because of her personal health issues, her husband health issues preventing him from assisting her and there is no one else in the rental property who is willing or capable of fulfilling the role of an Assistant Manager. The Manager is being treated for cancer. Her husband is in a care facility for dementia. She is absent from the property on a regular basis to visit him. I accept the evidence of the Manager that she can no longer do the duties on her own and that it is necessary for the landlord to hire someone to assist her in fulfilling this role. I also determined that it was necessary that the landlord provide a rental unit for the Assistant Manager.
- I accept the evidence of the proposed Assistant Manager and the Manager that the proposed Assistant Manager is capable of fulfilling the role. She presently lives a distance away and has a long commute. I determined that is appropriate for the Assistant Manager to live on site. I further determined that the landlord needs a rental unit to house the proposed Assistant Manager. I determined that the landlord truly intends to use the rental unit to house the proposed Assistant Manager.
- The tenant alleged the landlord is not acting in “good faith.” The Policy Guidelines provide where the good faith intent of the landlord is called into question the landlord has the burden of proof to establish they truly intend to do what is set out in the Notice and “The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.”
- The Tenant submits the landlord does not have a good faith intention because the landlord has another purpose or ulterior motive based on the following:
 - The Tenant(s) submit the landlord’s actions are retaliatory. The tenant asked the landlord to make certain repairs which the landlord failed to do. An arbitration hearing was held in where the arbitrator recorded a settlement between the parties which included the ordering of repairs to

be made plus the tenants were given two months free rent in compensation.

- The owner told the tenant that if he did not like it they should leave.
- The landlord had the opportunity at the end of April to use a different apartment to house the proposed Assistant Manager but chose instead to rent it to the next person on the wait list.
- The landlord refused to allow the tenant to use a hose to wash his car. The tenants have been able to use this house for washing their cars for many years.
- After carefully considering all of the evidence I determined there is insufficient evidence for to conclude that the landlord has another purpose or ulterior motive for the following reasons:
 - The tenants failed to present sufficient evidence to prove that the landlord's action in ending the tenancy is retaliatory. The Manager denies the landlord's actions are retaliatory or that they have another purpose or ulterior motive.
 - At an arbitration hearing held on February 21, 2019 the parties reached a settlement. The arbitrator recorded that settlement and ordered the landlord to make repairs and ordered compensation of two month free rent for the reduced value of the tenancy. The landlord has fulfilled its obligation under that settlement. The landlord is obligated to change the carpets the landlord has until June 1, 2019 to complete that part of the order.
 - I accept the submission of the Tenant that the evidence of a previous repair order can be evidence of an ulterior motive. However I determined that there must more to than just a repair order to support the allegation that the landlord has an ulterior motive. In this case the tenant failed to present sufficient evidence to establish this. It appears the parties worked together at the hearing as a settlement was reached. The landlord has complied with its obligations under the settlement agreement.
 - I determined there insufficient evidence that I can determined the landlord's actions are retaliatory or that the landlord has another purpose or ulterior motive. The Manager denies the allegations of the tenants.
- The tenant(s) testified that a particular unit which was appropriate to house the proposed Assistant Manager became vacant at the end of April and the landlord could have housed the proposed Assistant Manager in that unit. This does not assist in determining whether the landlord's actions were retaliatory or whether the landlord has another purpose or

has an ulterior motive. An Arbitrator is asked to decide the validity of a Notice to End Tenancy at the time it was given. The Notice to End Tenancy was served at the end of March 2019. I accept the testimony of the landlord that at the time the Notice to End Tenancy was given there had been no vacancies at the rental property for 1 ½ years. The tenants failed to provide sufficient evidence to establish that at the time the Notice to End Tenancy was served there was another rental unit available to house an Assistant Manager.

- I do not accept the submission of the tenants that the statement that the owner told him that if he did not like the situation he could leave is sufficient evidence of bad faith. Similarly I do not accept the evidence of the tenants that the refusal of the manager to give him access to a water hose to wash his car is sufficient evidence of bad faith. It appears that event took place after the service of the Notice to End Tenancy.
- In summary I determined there is considerable evidence based on the Manager's ill health, her husband's ill health and work pressure that there is a legitimate business need to hire an Assistant Manager and to provide a unit in the rental property for the proposed Assistant Manager to move to. The tenant alleged bad faith on behalf of the landlord. This is a difficult decision. An arbitrator is required to make his/her decision based on the evidence presented. While the landlord has the burden of proof I determined there was insufficient evidence to prove that the landlord has another purpose or ulterior motive. This decision is based on the evidence presented. The tenants had an advocate to assist them in the hearing.

Determination and Orders:

As a result I ordered that the application of the Tenant to cancel the 4 month Notice to End Tenancy be dismissed. The tenancy shall end as provided in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on July 31, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenants' Application for a Monetary Order:

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

I determined the Tenant(s) have failed to establish they are entitled to compensation for the following reasons:

- The tenants failed to prove the landlord failed to comply with the Act, regulations and/or tenancy agreement. For the reasons set out above I determined the landlord has established sufficient cause to end the tenancy. Even if the landlord had not been successful this does not give the tenant grounds to make a monetary claim.

- The Monetary Order worksheet provided by the tenants claimed \$1500 for loss of peace and enjoyment, harassment, \$1500 retaliation and \$2000 for health and stress. The tenant also claimed for 5 days of lost wages.

With respect to each of the tenant(s) claims I find as follows:

- I dismissed the Tenant(s) claim for 5 days of lost wages as the tenant failed to prove the landlord breached the Act and failed to provide evidence of his wage loss.
- I dismissed the Tenant(s) claims for loss of peace and enjoyment and harassment and retaliation as the Tenants failed to prove that the landlord failed to comply with the Act and failed to provide sufficient evidence to prove their loss.
- I dismissed the Tenant(s)' claim of \$2000 for health and stress as the Tenants failed to provide sufficient evidence that the landlord failed to comply with the Act and that they suffered the loss claimed. The tenants failed to present medical evidence.

Conclusion

In conclusion I dismissed the tenant(s) application to cancel the 4 month Notice to End Tenancy and I granted an Order of Possession effective July 31, 2019. I dismissed the Tenant's monetary claims as the tenants failed to prove the landlord failed to comply with the Act and failed to prove their loss. As the tenants have not been successful I dismissed the claim to recover the cost of the filing fee.

This decision is final and binding on the parties.

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: May 30, 2019

Residential Tenancy Branch