



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction:

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

- a. An order to cancel the two month Notice to End Tenancy dated March 25, 2019 and setting the end of tenancy for May 31, 2019.
- b. 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 2 month Notice to End Tenancy was served on the Tenant by posting on March 25, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on March 26, 2019. 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 tenant is entitled to an order cancelling the two month Notice to End Tenancy dated March 25, 2019 and setting the end of tenancy for May 31, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on January 1, 2014. The initial rent was \$850 per month payable in advance on the first day of each month. The present rent is \$916.70. The tenant paid a

security deposit of \$425 at the start of the tenancy. The rental unit is on the top floor of an 8 unit building in South Vancouver.

Both parties acknowledge that the landlord is a family corporation as defined by the Residential Tenancy Act.

Grounds for Termination:

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

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares

Landlord #1 gave the following evidence:

- He is the son of Landlord #2. He was recently appointed as a Director of the company.
- He is currently working and studying for a major post-graduate licencing designation exam to obtain his c p a designation. He anticipates that he will take 2 months off work so that he can prepare for a major exam which is scheduled for September 2019. In order to prepare for the exam he needs a quiet study place. The rental unit which is the subject of this litigation is on the top floor and it would be appropriate for his purposes as there is no one living above him.
- The rental unit is a 12 minute walk away from the Sky Train.
- On cross-examination he testified that he is presently working in North Vancouver. He has not been in the rental unit.
- There is another rental unit in the rental property which is on the second floor which is presently being renovated. It is expected to be completed in June 2019.
- He will be carrying out the duties of a building manager as part of the succession plan that is in place for him. He expects that he will be able to carry out these duties these duties as they are not too onerous as well as studying.
- He is currently living in a shared housing situation in Burnaby.

Landlord #2 gave the following evidence:

- The rental unit presently being renovated on the second floor is expected to be completed at the end of May or early June. The building is 53 years old and the units have not been renovated since they were built and are in need of a renovation.

- The landlord employed an off site building manager that performed the necessary duties for 13 years. The building manager retired about 1 ½ years ago and it is the intention of the landlord that her son will move in and perform the duties of the building manager.
- Landlord #1 was recently added as a Director to the family corporation. He is 27 years old and it is the plan that the responsibilities of the company will be passed to him over the next while and she will be able to take early retirement. He is completing his c p a program and needs a quiet place to study. The rental unit presently occupied by the Tenant would be perfect for this.
- All of the units in the rental property were fully rented when she instructed her agent to give the 2 month Notice to End Tenancy in February 2019. There was a mix up in communication and her agent did not give the Notice in February 2019. The Notice was not served on the Tenant until the end of March 2019.
- The landlord is renovating a unit on the second floor and the work is ongoing. The plan is that perhaps her grandfather could move into that unit. It is an ideal location although changes need to be made to accommodate his walker.
- On cross examination Landlord #2 acknowledged that her grandfather has mobility issues and there is no elevator in the rental property. It would be necessary for him to walk up one flight of stairs to get to the rental unit presently being renovated.
- She was not sure when the last break in occurred in the rental. The locks have not been changed in at least 5 ½ years.
- The previous Property Manager retired about 1 ½ to 2 years ago. He lived a few blocks away.
- Her son, Landlord #1 has never worked as a building manager before.
- A tenant who lives in one of the lower floor units works for the landlord and does cleaning of the laundry room, sweeping of floors etc.
- She acknowledged that as tenant leave the rental unit they are presently in the rental units would be renovated and rents would be increase.
- One of the renovated units in the rental property was advertised for rent at \$1745 per month.
- She is aware of the financial penalties that can be assessed against the landlord if they do not follow through on the grounds set out in the Notice to End Tenancy.
- The landlord has offered other Tenants a bonus of up to 12 months rent if they moved out to allow the landlord to renovate. The rental unit which is presently being renovated was one of those situations. She is not aware of exactly how much the tenant in that unit received because it was handled by her agent. She was also not able to give evidence as to when this Tenant agreed to the proposal and when he/she vacated.

The tenant gave the following evidence:

- He has lived in the rental unit for 5 ½ years and has friends in the area. He is 15 months away from his work.
- The landlord has attempted to evict him on 3 occasions in the last year.
- He was willing to accommodate the landlord's renovations goal by moving out.

The parties have been involved in three previous RTB hearings. One hearing was a June 6, 2019 hearing where the landlord issued a 10 day Notice to End Tenancy for non payment of rent after the tenant had withheld the rent because of a non working buzzer. The tenant paid the rent 3 weeks late but within the 5 days that would void the 10 day Notice to End Tenancy.

The second hearing was held on August 24, 2018. It involved a 4 month Notice to End Tenancy for renovation. The Notice was set aside after the Tenant testified he would move out to allow the landlord to complete the repairs.

The third hearing was held on April 12, 2019. In that case the tenant's application involving complaints about the intercom and low water pressure were dismissed.

The landlord submits the eviction is not retaliatory and the landlord is acting in "good faith" based on the following:

- Her son is now a Director of the Company.
- The son will take over management of the company and building upon completion of the professional designation requirements.
- The building is sufficiently small so that her son can learn.
- The long term property manager and building manager have retired.
- Her son requires the TOP floor corner suite as it overlooks the front door entrance and main street. This will allow visual monitoring of the building. There was a problem with break-ins in the past which required enhanced security locks at the entrance.
- The top floor suite is quiet as there are no tenants above him and this will permit her son to do the required studying.
- The Notice is not retaliatory as the landlord completed all repairs within a reasonable period of time.
- The vacant suite on the second floor which is presently being renovated is not adequate for the needs of the landlord. It is not sufficiently quiet as

there are tenants above. It does not have the same view for monitoring as the tenant's unit.

- The choice of units of where the landlord's son should move is a prerogative on the landlord and is not evidence of bad faith.

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.

...

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 (my emphasis).**

Analysis:

Both parties agreed that the landlord is a family corporation as defined by the Residential Tenancy Act.

Section 49(4) of the Residential Tenancy Act provides as follows:

49(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

After carefully considering all of the evidence and the submissions of both parties I determined the landlord failed to establish 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. 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.”
- I do not accept the submission of tenant that the 10 day Notice to End Tenancy served on him in 2018 is evidence of bad faith. The tenant withheld the rent when he had no right to do so. The landlord has a legal right to serve the 10 day Notice.
- An arbitrator is asked to determine the validity of a Notice to End Tenancy on the date that Notice was served (in this case March 25, 2019).
- While the landlord’s evidence is unclear I determined that as of that date the Notice to End Tenancy was served on the Tenant the landlord was aware or should have been aware that the Tenant in the second floor had accepted or was going to accept the landlord’s package and that he/she would be moving out.
- I determined the landlord failed to prove that the second floor apartment which will become available is inadequate for the needs of her son for the following reasons:
 - The rental property is several blocks off main streets and is in a quiet area.
 - The accessibility to the Sky Train is the same whether her son lives in the top floor unit or the second floor unit.
 - I determine the visual monitoring of the front door is limited whether the landlord’s son lives in the second floor unit or the top floor.

- There is insufficient evidence to determine that the presence of another Tenant living above the rental unit presently renovated is too noisy that would make it inadequate to study. Landlord #1 testified he has not been in the building (and presumably this includes the second floor unit and there is no direct evidence that the noise coming from the third floor unit is unacceptable).
- The building has not had a live in Manager in over 15 years. The landlord has a caretaker living in the bottom floor that cleans and maintenance.
- The explanation of her grandfather moving in is not supported by evidence. He has mobility issues and there are no elevators in the rental property. In the absence of sufficient evidence from the landlord that her grandfather could handle the stairs given mobility issues admitted to I determine the landlord failed to prove this allegation.
- The landlord is renovating rental units when they become available. Further the landlord is offering Tenants packages to vacate so that their suites and be renovated. The renovated suites are then put on the market at a much higher rent. While the landlord has a legal right to do this when the rental units become available I determined this is evidence of an ulterior motive.

In summary I determined the landlord failed to prove there is no ulterior motive as required by the Policy Guidelines and the previous court decisions set out in those Guidelines.

Determination and Orders:

As a result I ordered that the 2 month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful I ordered that the landlord reimburse the tenant the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

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 15, 2019