



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 12, 2019 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated February 28, 2019. The Tenants also sought reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant D.W. All parties agreed Tenant E.M. is a tenant under the agreement. The tenancy started April 09, 2016 and was for a fixed term of two years and 21 days ending May 01, 2018. The agreement includes a vacate clause. Rent is \$2,500.00 per month due on the first day of each month.

The Notice was submitted as evidence. The Tenants did not take issue with the form or content of the Notice. The grounds are that the rental unit will be occupied by the Landlord or the Landlord's close family member.

There was no issue that the Notice was served by registered mail. The Landlord did not know when it was sent. The Tenants provided the tracking number and I looked this up on the Canada Post website which shows the package was delivered March 4th. The Tenants agreed with this date.

In relation to the grounds for the Notice, the Landlord testified as follows.

He intends in good faith to move into the rental unit. He used to live in the rental unit from 2013 until the Tenants rented it. He enjoys the neighbourhood and convenience of the location. He is turning 25 years old and lives with his parents and younger sister. His relationship with his parents is suffering because he comes home late and they call wondering where he is. Further, his girlfriend lives over seas and visits him a few times a year. He wants his own space and more privacy.

He works at two locations. It takes him 30-40 minutes to get to one of the locations and 40-50 minutes to get to the other. Moving back to the rental unit will save him 15-20 minutes each trip. He is aware the Tenants would be entitled to apply for 12 months rent if he does not follow through with the stated purpose of the Notice and he would not risk that much money.

In their materials, the Tenants had raised an issue of prior communications with an agent for the Landlord about ending the tenancy, renovations and selling the rental unit. The Landlord testified as follows in relation to these communications. The Landlord's family rented the property on a two-year contract. The Tenants asked about extending the lease, but the Landlord was not interested. The Tenants kept asking about the Landlord's plan. The first plan was to demolish the rental unit and sell the property

because the housing market was good. The Tenants could not find a place in April of 2018, so the Landlord agreed to extend the lease by one month. The Landlord's agent asked the Tenants to sign a Mutual Agreement to End Tenancy. The Tenants did not reply so the agent asked again. The Tenants refused to sign the Mutual Agreement. At that point, the tenancy just went month-to-month as per the legislation.

In June of 2018, the Landlord decided not to demolish the rental unit but to sell it instead as the housing market started to crash. The house was listed June 25, 2018. It was the property that had value, not the house, so people did not come to look at the house. The Landlord did not receive any offers close to the asking price.

In September of 2018, the Landlord sent the agent to talk to the Tenants about renovating the house, so they could sell it for a better price. During that discussion, the agent made inappropriate remarks to the Tenants and from that point on the Landlord has stopped talking about plans for the rental unit with the Tenants.

In February of 2019, he decided he wanted to move back into the rental unit.

The Landlord testified that the rental unit was listed for sale June 25, 2018 and that he had not heard anything from his real estate agent since September or October of 2018. He said the rental unit is not currently listed for sale and believes it has not been since December of 2018 because he signed a six-month contract with the agent.

The Landlord submitted evidence showing his current employment. He submitted evidence that he works in the two locations mentioned. He submitted evidence showing travel times between his current home and work as well as the rental unit and work.

Tenant E.M. testified as follows. The Landlord tried many times to get the Tenants to sign a Mutual Agreement to End the Tenancy. The rental unit was listed for sale for six months. The Tenants believe the Landlord listed it for sale to scare them and cause them to vacate the rental unit. This belief is based on the fact that the Landlord's father owns part of the rental unit yet did not sign the MLS listing for the sale of the rental unit.

Tenant E.M. further testified as follows. The Tenants had a discussion with the Landlord's agent and she tried to terminate the tenancy in December. The texts show the Landlord asked on multiple occasions for the Tenants to sign a Mutual Agreement to End the Tenancy. He referred to pages 10, 13, 14 and 15 of the texts submitted. The Landlord has been driving to and from his current work since before the Tenants moved

into the rental unit. The last discussion the Tenants had with the agent about ending the tenancy was September 22nd. The Tenants also had a meeting with the Landlord a few weeks before the hearing to try and resolve this matter.

The Tenants submitted an email they received about the rental unit being listed for sale.

The Tenants submitted notes of the discussion they had with the Landlord's agent on September 22, 2018. The agent told the Tenants the Landlord wants a vacant house to maybe do some renovations or list it for sale again. The agent told the Tenants that if the parties did not sign termination of the tenancy then the Landlord is going to move back into the house.

The texts submitted by the Tenants show the following. On July 12, 2017, the Landlord did not agree to extend the lease past the end date. At that time, the agent said she thought the Landlord would build a new house. On May 18, 2018, the Landlord allowed the Tenants to stay one further month. On May 21, 2018, the agent asked the Tenants to sign a Mutual Agreement to End Tenancy. On May 24, 2018, the agent told the Tenants the Landlord was going to list the house and wanted to sign a Mutual Agreement to End Tenancy because the lease ended May 01st. The Tenants did not reply, and the agent sent another text June 06, 2018 asking for the Tenants email to send a Mutual Agreement to End Tenancy. The texts show the agent again asked the Tenants to agree to end the tenancy on June 09, 2018.

The Tenants submitted an MLS listing posted June 25, 2018 with an expiry date of December 20, 2018.

Analysis

I find based on the Canada Post information that the Tenants received the Notice March 04, 2019. Therefore, the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(3) of the *Act*. The Tenants had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I find the Tenants filed the Application within the 15-day time limit set out in the *Act*.

Section 49(3) of the *Act* states:

(3) 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.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2 deals with the good faith requirement that has been called into question by the Tenants. At page two, the Policy Guideline states:

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.

I accept that the Landlord intends in good faith to occupy the rental unit. I accept that the Landlord used to live at the rental unit as the Tenants did not dispute this. I find the Landlord provided valid reasons for wanting to move back into the rental unit. The Landlord provided evidence in support of his position such as proof of employment, proof of the locations of his work and evidence of his commute. There was nothing about the testimony of the Landlord that caused me to question his reliability or credibility. I note that the Landlord acknowledged issues and evidence that could possibly have negatively affected his own position.

I accept the Tenants' evidence that the Landlord has previously said he was going to build a new house, renovate and/or sell the rental unit. This is supported by the evidence and the Landlord did not dispute this. I also accept that the Landlord, through his agent, previously sought to end the tenancy through a Mutual Agreement to End the Tenancy. Again, the Landlord did not dispute this. I accept that these issues could call into question the good faith of a landlord who subsequently issues a notice to end the tenancy under section 49 of the *Act*. However, I also find that landlords must be permitted to change their mind about their plans for their property. I accept that this is what happened here. I do not find the previous correspondence sufficient to cause me

to determine that the Landlord is, at present, being dishonest about his intention to move into the rental unit. I find it more likely than not that the Landlord does intend to move into the rental unit.

In finding the above, I have considered the following. The prior communications about the plans for the rental unit are dated. The rental unit has not been listed for sale since December of 2018. The Landlord has not had further discussions with the Tenants about ending the tenancy since September of 2018. The discussions about signing a Mutual Agreement to End Tenancy appear to have occurred in the context of the Landlord not wanting to extend the lease past the end date noted in the tenancy agreement. There is no evidence or valid basis for finding that the Landlord listed the rental unit for sale to scare the Tenants into vacating. I am satisfied the Landlord has met his burden to prove the grounds for the Notice and the Tenants have not submitted evidence that causes me to question the Landlord's intent.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

I uphold the Notice and dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* requires me to issue the Landlord an Order of Possession given I have upheld the Notice, dismissed the dispute of the Notice and found the Notice complies with section 52 of the *Act*. The Landlord asked that the Order of Possession be effective May 31, 2019 if issued based on the Notice. I issue the Landlord an Order of Possession effective at 1:00 p.m. on May 31, 2019.

I note that the Tenants are entitled to receive the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act* if this has not already been addressed.

I also note that, if the Landlord does not follow through with the stated purpose of the Notice, the Tenants can apply for the equivalent of 12 month's rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*.

I decline to award the Tenants reimbursement for the filing fee given they were not successful in the application.

Conclusion

The Notice is upheld, and the Landlord is issued an Order of Possession effective at 1:00 p.m. on May 31, 2019. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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: May 06, 2019

Residential Tenancy Branch