



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on May 14, 2019, wherein the Tenant sought an Order canceling a 4 Month Notice to End Tenancy for Landlord's Use issued on April 29, 2019.

The hearing was scheduled for teleconference at 9:30 a.m. on June 27, 2019. Both parties called into the hearing. The Landlord called on his own behalf and the Tenant's mother, R.C., called in on behalf of the Tenant. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The Tenant filed in evidence only the first page of the Notice. The Landlord did not file any evidence. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The Landlord stated that he purchased the property on April 15, 2019. The tenancy was pre-existing. He confirmed that the rental unit is in a home with an upstairs unit and a basement suite; both are currently rented.

The Landlord stated that the Tenant pays \$580.00 in rent, which he said he believes includes \$550.00 for rent in addition to \$30.00 per month in hydro. He also stated that he was not provided with a tenancy agreement from the previous owner/landlord such that he relied on information he received from the Tenant and his mother as to the rent payable.

As noted, only the first page of the Notice was provided. The Landlord testified that the second page indicated that the reasons for issuing the Notice were that the Landlord wanted to “perform renovations of repairs that are so extensive that the rental unit must be vacant.” He also testified that the Notice indicated that the nature of the work does not require permits by law.

The Landlord testified that the Notice was served on the Tenant on person on April 30, 2019.

On the Application for Dispute Resolution the Tenant alleged that the Landlord issued the Notice because he wanted more rent for the rental unit. At the hearing before me the Landlord testified that he did not ask the Tenant to pay increased rent. The Landlord also stated that he did not ask the Tenant to pay 20% of the hydro.

The Landlord testified that he intends to remove the basement suite as it is an illegal suite. In terms of the work required, he stated that he is going to “replace everything because the place needs a lot of work”. He stated that he wants to remodel the whole suite because he wants to make something for his kids or his parents. He further stated that he wants to make the bedroom into a recreation room for his children as he does not want to rent it out anymore.

The Landlord stated that he wanted to be nice and give the Tenant more notice because he likes the Tenant and he is the neighbour's son. When I asked the Landlord if he was aware there was a different notice for Landlord's use if the Landlord's family wishes to occupy the rental unit, the Landlord responded that he "needs some time to renovate".

In response to the Landlord's testimony, the Tenant's mother, R.C. testified as follows. She stated that they own the house next door and confirmed that her son has lived in the rental unit for 4-5 years. R.C. further stated that her son pays \$550.00 rent and \$30.00 for hydro.

R.C. stated that a few days before they received the Notice the Landlord asked the Tenant to pay more rent. She testified that she was present with her husband, S.C., at their front door when the Landlord came over to speak to them. At that time he asked the Tenant to pay \$600.00 per month plus 20% of the hydro. R.C. stated that she acknowledged that the rent was low, but did not feel his request was reasonable. After he left she called the Landlord to discuss this because she didn't think it was appropriate that he pay so much of the hydro when his place was so small and when there are four adult students upstairs.

R.C. confirmed that the Landlord served all three pages on the Notice. She was unaware that only the first page had been uploaded and confirmed this was done in error.

R.C. stated that the reasons were as noted by the Landlord in his testimony; she further noted that Landlord also included the following details:

"renovation restructure the whole suite including, kitchen, bathroom and bedroom".

[Reproduced as written]

R.C. disputed the Landlord's testimony regarding his intentions as she stated that the basement already has a large family room. She further stated that the previous owner was a single woman and she and her husband helped her out over the years.

In reply the Landlord confirmed the details: "renovation restructure the whole suite including, kitchen, bathroom and bedroom" as the Tenant's mother testified. He also questioned how it was that the Tenant knew there was a family room.

Analysis

After consideration of the testimony and evidence before me I find as follows.

As noted during the hearing, when a tenant applies to dispute a notice to end tenancy, the landlord bears the burden of proving the reasons they wish to end the tenancy. The Landlord must prove their reasons on a balance of probabilities.

In this case, neither party submitted a complete copy of the Notice. That said, the parties confirmed they each had a copy of the Notice before them during the hearing and agreed that the reasons were that the Landlord intended to renovate and repair the rental unit.

During the hearing the Landlord testified that he wishes to use the rental property for his family. He gave minimal details of his intentions in terms of the extent of the proposed renovations.

The Tenant's mother appeared on his behalf and gave affirmed testimony. She testified that two to three days prior to receiving the Notice the Landlord came to their home and spoke with her and her husband at which time he asked to raise the rent

In the case before me the Landlord issued the Notice pursuant to section 49(6) which reads as follows:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

I find the Landlord has submitted insufficient evidence to support a finding that he intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The testimony provided by the Landlord in this regard was vague, minimal

and in all the circumstances does not meet the burden of proving the rental unit needs to be vacant.

Further, I note that the Landlord failed to submit any approvals or permits for the proposed work; he merely testified that permits and approvals are not required.

Residential Tenancy Policy Guideline 2—Ending a Tenancy: Landlord's Use of Property provides in part as follows:

...

When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.

...

If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government. Local governments may have information about when permits or approvals are required on their website. The Residential Tenancy Branch is unable to advise people about the specifics of permit requirements. Landlords should check with the permit department in the municipality or regional district in which the rental unit is located to determine the requirements.

In the case before me, although the Landlord claimed that permits and approvals were not required, he provided no evidence, aside from his assertion, to support such a claim. I therefore find he has submitted insufficient evidence to support a finding that permits and approvals are not required for the proposed work.

Section 49(6) requires the Landlord to issue the Notice in good faith. The Tenant alleged the Landlord issued the Notice because he wishes to raise the rent, not for the reasons cited on the Notice. The Tenant's mother provided first hand testimony as to a conversation she had with the Landlord a few days prior to receiving the Notice, wherein he asked that the Tenant pay more rent and contribute more to the electrical utility. Although the Landlord denied saying this, I prefer her testimony over his. I find her testimony to be credible; she was consistent in her recollection, provided details as to the location of the conversation, the presence of her husband, the amount of rent and contribution to the utility requested by the Landlord and her response to the Landlord.

She also confirmed that she called him after the conversation to reiterate her concerns. I am persuaded that the conversation occurred as she recalled.

Guideline 2 further provides as follows:

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.

In the case before me, I find the Landlord has failed to establish that he is acting in good faith. I find the Landlord has an ulterior motive and that he did not issue the Notice for the reasons cited. I find it likely the Landlord issued the Notice as he wishes to obtain higher rent from the Tenant. Even if I am incorrect and the Landlord's true intention is to occupy the rental unit that is not the reason cited on the Notice. I therefore find the Landlord has failed to prove that he honestly intends to use the rental unit for the purposes stated on the Notice.

In all the circumstances, I find the Tenant's application should be granted.

Conclusion

The Notice is cancelled. The tenancy shall continue until 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 *Residential Tenancy Act*.

Dated: June 27, 2019

Residential Tenancy Branch