



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORIAH ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy, issued by the landlord for the landlord's use of the property. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was represented by their agent. Legal counsel for both parties also attended the hearing.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental unit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The rental unit is an apartment in a 13-unit complex. The tenancy started on December 1, 2009. The current landlord purchased the rental property in May 2017. The current monthly rent is \$738.00 and is payable on the 1st day of each month. Prior to moving in the tenant paid a security deposit of \$350.00.

On April 09, 2019 the landlord served the tenant with a two month notice to end tenancy for landlord's use of property.

The two-month notice was issued on the grounds that a close family member intends to occupy the rental unit and that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person intends to occupy the rental unit. The tenant disputed the notice in a timely manner on the grounds that it was not issued in good faith.

The tenant testified that when this current landlord purchased the property, he sent a notice to the occupants of all 13 units to start looking for alternative accommodation as he had intentions to renovate the units. The tenant filed a copy of the letter into evidence. The letter is dated June 03, 2017 and states in part:

“Please be advised that we are planning to renovate the building and we want to give you ample time to be able to look for a new home. The renovation would render the building “uninhabitable” for the duration of the renovation. Please let us know how much time you need to look for a new accommodation”

The tenant testified that In May 2017 all tenants were asked to vacate to allow for full renovations. The landlord maintained that he did not evict any tenants and provided information on the reasons why tenants moved out. The landlord stated that most moved out by choice and that other than these applicants, he has not served any other tenants with notices to end tenancy.

The landlord stated that when he purchased the building there were 3 units that were unoccupied and as tenants moved out and units became vacant, he carried out renovations that involved painting, changing cabinets and other renovations which did not require permits. The landlord agreed that all the other current occupants of the apartment building moved in after he purchased the building.

The tenant also made reference to three notices to end tenancy that were served on him by the landlord in February 2018. The tenant applied to dispute the notices and, in a decision, dated May 18, 2018 the notices were set aside, and the tenancy continued. The Arbitrator made a finding that the two-month notice to end tenancy for landlord's use of property was not served in good faith.

The tenant stated that the landlord has tried every means available to end the tenancies of the occupants of the building with the intention of renovating without permits.

The landlord submits that it is his intent to have his son to occupy the rental unit while his son attends classes and works part time. The landlord testified that his son is 21

years old, is a student, currently lives at home and has completed two years at the local university. The landlord stated that his son would like to be independent and in March 2019, he started working as a barista in a coffee shop that is a four-minute walk from the rental unit. The landlord filed a copy of his son's work schedule.

The landlord also stated that there is a bus stop just outside the property from where his son can take a bus going directly to the university that he attends. The landlord stated that his son cannot afford a car and therefore must use public transit to attend school. The landlord also stated that his son cannot afford the full rent and has found a roommate to share accommodation with. The landlord filed a tenancy agreement naming his son and the roommate as tenants for a tenancy that will start on July 01, 2019 for a fixed term of one year.

The landlord stated that there are currently no vacant suites in the apartment building or in any other properties that he owns in the vicinity of the rental unit.

Analysis

Section 49 of the *Act* contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the *Act*, a tenant may dispute a two-month notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice.

If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the two-month notice. Further, two-month notices have a good faith requirement.

Residential Tenancy Policy Guideline #2 "Good Faith Requirement when Ending a Tenancy" provides the following guidance: 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 two-month notice to end tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the two-month notice.

The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I accept the landlord's testimony that this rental unit is in a location that is close to his son's place of employment and convenient for the use of public transportation to attend university. The landlord filed documents to support his testimony.

Based on the sworn testimony of both parties, and the documents filed into evidence, I find on a balance of probabilities that it is more likely than not that the landlord intends in good faith to allow his son to occupy the rental unit. The evidence supports a finding that the landlord does have a good faith intention to utilize the rental unit for his son to occupy with a roommate while he attends university.

The two-month notice that was set aside in May 2018 was for the landlord's daughter to occupy the rental unit. Now since over a year has passed, I find that is reasonable for the landlord to want to end the tenancy to allow his younger child to occupy the rental unit while he is attending university. I find that there is insufficient evidence of an ulterior motive to end the tenancy on the part of the landlord and that the landlord has a good faith intention to use the rental unit for the purpose stated in the two-month notice.

The tenant argued that the landlord has failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to allow his son to move into the rental unit. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord

has met the good faith requirement, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The landlord agreed to allow the tenant more time to move out and therefore the tenancy will continue till July 31, 2019

The tenant has not proven his case and must bear the cost of filing his application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00 p.m. on July 31, 2019.**

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 17, 2019

Residential Tenancy Branch