



Dispute Resolution Services

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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 May 19, 2019 and setting the end of tenancy for July 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 Notice to End Tenancy was served on the Tenant on May 19, 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 resides on June 4, 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 May 19, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began 4 years ago. The tenancy agreement provided that the tenant(s) would pay rent of \$450 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$225 at the start of the tenancy.

The rental unit is a studio.

In of 2018 the landlords told the tenant that the rental unit was needed to house her brother and his family who would be moving from out of town. The tenant pointed out that a brother does not qualify as a close family member. The landlord then served a one month Notice to End Tenancy. In a decision dated July 17, 2018 an arbitrator ordered that the one month Notice to End Tenancy be cancelled.

The upstairs portion of the rental property is 3 bedrooms. The landlord's sister and her two children live in this area along with the landlord's two grandparents. The brother moved and started living in the upstairs portion in January 2019. His wife and two children moved in April 2019. The representative of the landlord testified the grandparents will be occupying the rental unit as it is too difficult for them with one bathroom.

The tenant submits this is a backdoor method for the landlord to regain possession because the brother and his family moved in. He submits he would not be asked to move if the brother and his family did not move. He further submits the landlord has an ulterior motive and is not acting in good faith.

Grounds for Termination:

The parties did not provide a complete copy of the Notice to End Tenancy. However, the parties advised that it is dated May 19, 2019, sets the end of tenancy for July 31, 2019 and identifies the following grounds:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Policy Guideline 2A provides as follows:

A. LEGISLATIVE FRAMEWORK

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

...

"Close family member" means the landlord's parent, spouse or child, or the parent or

child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.

...

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. **It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA** or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

Analysis:

After carefully considering all of the evidence and the submissions of both parties I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- The landlord failed to present any evidence from the grandparents indicating they intend or wish to move into the rental unit.
- I determined the landlord failed to prove that she is acting in good faith. The law does not permit a landlord to end a tenancy on the basis that the landlord's brother and his family are moving into the rental unit. The brother, his wife and two children have now moved into the upstairs portion. The proposal of moving the grandparents downstairs is a back door method of doing what the Residential Tenancy Act does not permit (ending the tenancy on the basis that the brother and his family are moving in).
- I determined the landlord has an ulterior motive. She is ending the tenancy to give more space to the brother and his family. The Act does not permit a landlord to end the tenancy on the basis that a brother is moving in.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated May 19, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

As the tenant has been successful with this application I ordered that the landlord pay to 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: July 15, 2019

Residential Tenancy Branch