



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LOA, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated May 23, 2019 and received May 24. The Notice claims that the landlord or a close family member intends to occupy the rental unit.

The tenant also sought an order regarding locks and access but that issue was resolved prior to this hearing.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Section 49 of the *Residential Tenancy Act* (the “Act”) provides that a landlord may end a tenancy on two months’ notice if he or she intends, in good faith, to occupy the rental unit or have a close family member occupy the rental unit. The issue in this case is whether or not these landlords have that good faith intention.

Background and Evidence

The rental unit is a large house in a city on Vancouver Island. The landlords, husband and wife had the home constructed in about 1996 and lived in it until 2012 at which time they rented the entire house to this tenant, their niece, and moved to the lower mainland for work.

The tenancy started in April 2012. The monthly rent is \$1050.00, due on the first of each month. The tenant was not required to pay any deposit money at the start of the tenancy.

In early 2018 the tenant rented out a suite attached to the house to Mr. M.D. Mr. M.D. is in his twenties. He is the landlords' grandson and thus is related to the tenant too. The suite in question is semi-detached from the house. It has its own entrance but does not have its own toilet. Mr. M.D. was required to enter the main house to use a toilet there.

In early 2019 Mr. M.D. began inviting his girlfriend to stay over with a frequency that disturbed the tenant. She requested that the girlfriend (who would also be using the bathroom in the main house) not stay there so much. In response it appears that Mr. M.D. changed the locks to his suite without the tenant's authorization and did not provide her with a key, thus barring any entry by her.

All this resulted in a dispute and a determination by the Residential Tenancy Branch (related file shown on cover page of this decision) that Mr. M.D. was not a tenant under the *Act*. The tenant evicted him.

The landlord Mr. G. testifies that he and Ms. G. have been looking after and helping Mr. M.D. most of his life. Mr. M.D. has diabetes issues and suffers from a cognitive variance that renders it difficult for him to recognize an emotion displayed by another person.

Mr. G. says that the dispute between the tenant and Mr. M.D. cause the landlords to re-evaluate their own situation and retirement plans. He says that the landlords' intention is for them to move back into the house and for their daughter Ms. T.D. and her son, their grandson Mr. M.D. to live there with them

Mr. G reviewed the monetary aspects of the landlords' plan, involving: giving up their current rental unit, buying a travel trailer and renting a trailer park space to live in during the week while at work in the lower mainland, losing this rental income and saving on their current rental expenditures.

The landlords have not yet given notice to their current landlord. They have not purchased a travel trailer.

Mr. G. says he has applied for work on Vancouver Island near the house. He is a work safety specialist. He applied to one place about eight months ago and to another about two or three weeks ago.

Ms. G. testifies that she can no longer negotiate stairs and that their present place has stairs up to the front door and then stairs inside, while the house in question is a rancher, without a significant number of stairs. Thus, the move back to this house would convenience her.

She says Mr. M.D. lived with them since he was four years old, including after their move to the lower mainland in 2012. She feels they need to protect him.

In response the tenant acknowledges that it was agreed that landlords would be moving back in and she be moving out at some time. From earlier discussions with the landlords, she thought it would not be happening until sometime next year.

The tenant refers to an email sent by Ms. T.D. to the tenant's mother indicating that if the tenant permitted Mr. M.D. to come back and live at the house the Notice in question would be cancelled.

Analysis

Residential Tenancy Guideline 2A, "Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member" sets out the test for "good faith" intention.

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.

Having considered the evidence and bearing in mind that the onus of establishing a good faith intention initially falls to the landlord, I conclude that the landlords do have a good faith or bona fide intention to re-occupy their house and to live there, perhaps part-time at first, with their daughter and grandson.

It is apparent that the Notice arose as a result of the tenant's dispute with the grandson, but I do not find that the landlords have an ulterior motive for giving the Notice or that they are acting out of a desire to rid themselves of a troublesome tenant. Their desire is to provide proper accommodation for their grandson and to accelerate their pre-established retirement plans. That is a bona fide motive.

If Ms. T.D.'s email to the tenant's mother truly captures the intention of the landlords, then in my view it confirms their fundamental good faith desire to provide appropriate accommodation for Mr. M.D. and not a bad faith desire to rid themselves of the tenant.

Conclusion

The Notice is a valid Notice. The tenant's application is dismissed. In accordance with s. 55 of the *Act*, the landlords are entitled to an order of possession. As the Notice was given in May 2019, the earliest effective date for it to end the tenancy would have been July 31, 2019, considering that the tenant's rent was due and payable on the first of each month. However, the Notice gives August 1, 2019 as the effective date. It is my understanding of s. 53 of the *Act* that in these circumstances the effective date of the Notice is automatically corrected to August 31. The order of possession will be effective at one o'clock in the afternoon on August 31, 2019.

It should be noted that the parties were informed of the recent change to s. 51 of the *Act* and the fact of a penalty equivalent to twelve months' rent should the rental unit not be used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

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 17, 2019

Residential Tenancy Branch