



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This matter dealt with an application by the Tenants to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the Property.

The Tenants' Advocate said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on June 11, 2019. Based on the evidence of the Tenants' Advocate, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property?

Background and Evidence

The male Tenant moved into the rental unit approximately 20 years ago and this tenancy started January 18, 2018 when the Landlord purchased the property. The tenancy is a verbal month to month tenancy. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 at the start of the tenancy. The Tenant said no condition inspection report was completed at the start of the tenancy.

The Landlord said he served the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019. The Landlord said he personally delivered the Notice to the Tenants on June 2, 2019. The Notice has an effective vacancy date of July 31, 2019 which is incorrect. Pursuant to section 53 of the Act the effective vacancy date should read September 1, 2019. Both parties understood the change of the effective vacancy date to September 1, 2019.

The Landlord continued to say that he issued the Notice to End Tenancy because his mother is moving into the rental unit. The Landlord said his mother moved from India in March 2019 to live with the Landlord's family and to provide child care for his children. The Landlord continued to say his mother and father both moved here from India, but because of privacy concerns in his small house his father has moved back to India for now. The Landlord's said his family live in the upper unit in the rental house the Tenants are in the basement unit. The Landlord said he issued Notice to End Tenancy to the Tenants because he needs the rental unit for his mother and father. The Landlord said his mother is planning to move into the Tenants' rental unit as soon as it is available.

The Tenants' Advocate said that the Tenants have received two potential tenancy agreements from the Landlord one dated March 22, 2019 and the second dated April 18, 2019. Both tenancy agreements have a rent increase that does not comply with the Residential Tenancy Act. The Tenants said they did not sign the agreements as they understood the agreements did not comply with the Residential Tenancy Act. The Tenants' Advocate said the Tenants believe the Landlord issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property just to end the tenancy so that the Landlord could rent the unit at an increase rental amount.

Further the Tenants' Advocate said the Landlord has not provided any evidence to support his claim that his mother is moving into the Tenants' rental unit. The Advocate said the burden of proof is on the Landlord to show that a close family member (his mother) is moving into the unit and that the Landlord is acting in good faith. The Advocate said with no supporting evidence of either of these claims the Landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property should be cancelled and the tenancy order to continue as agreed.

The Landlord said this is his first time being a landlord and he didn't understand that he had to provide evidence that his mother was moving into the Tenants' rental unit. The Landlord continued to say that his house is too small for his family and he needs the basement rental unit for his mother at present and then for his father when he returns from India. The Landlord said the rental unit will be used for his family.

The Tenants Advocate continued to say there is no evidence from the Landlord to support his claims and the previous attempts at increasing the Tenants rent outside of the Act shows that the Landlord was willing to continue the tenancy but at a high amount of rent. As the Tenants did not agree to the new tenancy agreements and the rent increases the Landlord is now trying to end the tenancy. The Advocate said the Landlord is acting in bad faith.

The Landlord said things changed from March and April 2019 to June 2019 with his mother and father as he needed more space for his family and that is why he issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property.

The Tenants' Advocate said in closing the Landlord has the burden of proving that he is acting in good faith and that his mother is actually moving into the rental unit. The Advocate said the Landlord has not submitted any evidence to support either of these claims. The Tenants' Advocate requested that the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019 be cancelled and the tenancy ordered to continue as agreed.

The Landlord said in closing that his family is under stress as his mother has no privacy and she may go back to India if he can not provide suitable living accommodation for her. The Landlord continued to say it is important for his family that his mother stays with them as she provides child care while he and his wife are at work. The Landlord said this is a very difficult situation for his family and he wants to end the tenancy so his mother can move into the rental unit.

Analysis

Section 49 (3) of the Act says: 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.

Further Policy Guideline 2A (B) says:

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.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case. If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith. **The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.**

A Landlord has the right to end a tenancy if the rental unit is being used for the owner or a close family member. In this situation the Landlord has given affirmed testimony that his mother is moving into the rental unit, but the Landlord has not provided any supporting evidence to prove this.

The Tenants and the Tenants' advocate have submitted two tenancy agreements offered to the Tenants extending this tenancy to October 31, 2019 with rent increases that do not comply with the Residential Tenancy Act. The Tenants' Advocate says that this indicates the Landlord did not want to end the tenancy but just wanted to increase the rent. The Advocate said the Landlord was acting in bad faith by issuing the 2 Month Notice to End Tenancy for Landlord's Use of the Property because his actions are just to increase the rent.

Further I accept the Tenants' Advocate's submission and evidence that the Landlord has not provided any evidence that supports the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019. As well Policy Guideline 2 A (B) says it is the responsibility of the Landlord to demonstrate a plan to occupy the unit. In the absence of any evidence from the Landlord I find the Landlord has not met the burden of proof to support the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019. Further I find the Tenants have established grounds that the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019 is not in good faith. Consequently, I cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019 and I order the Tenancy to continue as verbally agreed to.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of the Property dated June 1, 2019 is cancelled and the tenancy is ordered to continue as agreed.

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 22, 2109.

Residential Tenancy Branch