



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant ER (the tenant) confirmed that on May 30, 2019, they received the 2 Month Notice posted on the tenant's door by the landlord that day, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on June 20, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy for the lower suite in the landlord's home began in July 2012. The parties agreed that the current monthly rent is set at \$890.00, payable in advance on the 8th of each month. The landlord continues to hold the tenant's \$400.00 security deposit. The tenants have not paid any rent for July 2019.

The parties agreed that the landlord issued 1 Month Notices to End Tenancy for Cause (1 Month Notices) to the tenants on February 2, 2019, and April 8, 2019. The tenants were successful in having both of these Notices set aside, the second by way of the landlord's withdrawal of the Notice.

The landlord's 2 Month Notice currently before me identified the following reason for seeking an end to this tenancy by July 31, 2019:

- *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...*

The 82 year old landlord issued this 2 Month Notice because they are having difficulty climbing the 14 steps required to use their upper suite in this dwelling. The landlord provided some medical information as well as statements that they are attempting to remain in this home by living in the lower level where access would be easier during their advancing years. The landlord gave undisputed sworn testimony that the suite the landlord is currently occupying will be used in the future for their son who will be returning for awhile in September to assist in planning the landlord's affairs or, if necessary, a caregiver who would be able to assist the landlord. According to the landlord's written evidence, their family would like the landlord to sell the home and move to a smaller more accessible location where more services would be provided to assist the landlord. The landlord's written evidence submitted that the landlord does not have the funds to install an elevator in this home.

At the hearing, the landlord's advocate noted that the landlord lived in the lower level of this dwelling for a five year period prior to the tenants taking possession of that suite and would be better able to cope with their advancing years without the need to navigate stairs to access their living area.

The tenants maintained that the true reason for the landlord's issuance of the 2 Month Notice was that their previous attempts to end this tenancy for cause based on the 1 Month Notices had proven unsuccessful. Tenant JO questioned why the landlord was unable to remain in their upper level suite now as opposed to seven years ago when

this tenancy began. The tenant testified that the landlord is physically active, and demonstrates few mobility problems in moving around and doing gardening on the property.

Analysis

Section 49(8) of the *Act* provides that upon receipt of a 2 Month Notice the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Pursuant to section 49(8) of the *Act*, a tenant may dispute a 1 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 2 Month Notice. As the tenants submitted their application to cancel the 2 Month Notice on June 9, 2019, they were within the time limit for doing so, and the landlord must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

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.

Residential Tenancy Branch Policy Guideline 2A describes the good faith provision in section 49(3) in the following terms:

...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...

After considering the sworn testimony of the parties and the written evidence of the parties, including signed Affidavit from the landlord, I find that the landlord has certainly met the burden of proof that would demonstrate that they are intending in good faith to use the suite currently occupied by the tenants as the landlord's principal residence.

Based on the age of the landlord, the note from the landlord's doctor indicating that the landlord suffers some advancing mobility challenges, and the preference of the landlord's family that the landlord not expose themselves to ongoing and continuous hazards in climbing stairs to access their rental unit, I find that the landlord's reasons for deciding to move to the lower suite in this dwelling appear reasonable. While these issues may not have been as prevalent seven years ago when this tenancy began, the landlord is now 82 years of age, and it is understandable that health concerns as to the safety of living on the upper level of this dwelling would be more of an issue now than they were seven years ago.

The fact that the landlord has attempted to end this tenancy on previous occasions in the past year for cause has little bearing on whether the landlord intends in good faith to move into the lower level of this home where accessibility will be easier for the landlord. I also note that the landlord's advocate stated that the landlord has lived in the lower level of this dwelling for a five year period in the past, which demonstrates that the landlord is fully aware of what would be involved in residing on the lower level of this building.

As I accept that the landlord is acting in good faith in needing the rental unit for the purpose stated in their 2 Month Notice, I dismiss the tenants' application to cancel the 2 Month Notice.

Section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*". I am satisfied that the landlord's 2 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. I do so as the effective date of the 2 Notice identified July 31, 2019 as the date when this tenancy is to end. Since July 31, 2019, is the day after this hearing, the tenants are entitled to this additional notice regarding the end of their tenancy. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenants have been unsuccessful in their application, they bear the cost of their filling fee for this application.

Conclusion

I dismiss the tenants' application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 30, 2019

Residential Tenancy Branch