



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's Two Month Notice pursuant to section 49?

Background and Evidence

The parties testified that the tenancy started in 2015. The monthly rent was \$875.00 and the tenants paid a \$375.00 security deposit.

The parties testified that the rental unit is on the lower level of the landlords' house. The landlords live on the upper level. The rental unit was previously separated from the house as a separate suite. However, the separate suite was decommissioned by the city in 2017. However, the tenant and the landlords have separate living areas except for a shared laundry.

The landlords issued a Two Month Notice on June 11, 2019 with a stated move out date of August 31, 2019. The stated reason to end the tenancy was so that "...the rental unit will be occupied by the landlord or the landlord's close family member."

The landlords testified that they intended to occupy the rental unit. Specifically, the testified that it was getting too crowded upstairs and they intended to store possessions

in the downstairs space. Further, the landlords testified that they had children and grandchildren that lived out of the province and they wanted to have space to accommodate guests approximately once a month. In addition, the landlords testified that landlord DS has a medical condition which makes it difficult for her to ambulate stairs so she intends to use the lower level of the property.

The tenant argued that the landlords did not intend in good faith to occupy the rental unit. Specifically, the tenants argued that section 49 of the Act does not permit the landlords to end the tenancy for storage or to accommodate guests.

Analysis

Section 49(3) of the *Act* permits a landlord to end a tenancy "...if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Residential Tenancy Policy Guideline No. 2A explains the good faith requirement in Section 49(3) of the *Act* as follows:

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

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)).

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.

In this matter the landlord testified that they intend to occupy the rental unit by using the space for storage, guest accommodations and accessible space for landlord DS. The tenants have not submitted any evidence to suggest that landlord does not genuinely intends to reside in the rental unit or to show that the landlord is not acting in good faith.

Furthermore, the tenant argued that the landlords' planned use of the property was not a valid basis to end the tenancy pursuant to section 49 of the *Act*. *Residential Tenancy Policy Guideline* No. 2A discusses landlord's reclamation of a rental unit as living space as follows:

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

In this matter, I find that the landlords' proposed use for the rental unit does fit within the scope a valid reclamation of the rental unit as a living space. I find that storing possession in the rental unit and making occasional use of that part of the house to

accommodate guests and provide an accessible area for landlord DS is using the rental unit as a living space.

For the above-stated reasons, I dismiss the tenants' application to cancel the Two Month Notice.

Section 55 of the *Act* states that when a tenant's application to cancel a notice to end tenancy for cause is dismissed, I must grant the landlords an order of possession if the landlord has issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the Two Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective at 1:00 p.m. on August 31, 21019.

Conclusion

The tenant's application to cancel the Two Month Notice is dismissed.

I find the landlords are entitled to an order of possession effective at **1:00 p.m. on August 31, 2019**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: August 13, 2019

Residential Tenancy Branch