



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL-4M, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. An order to cancel the four month Notice to End Tenancy dated May 16, 2019 and setting the end of tenancy for September 30, 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 four month Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the tenants reside on May 16, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail to where the landlords reside on June 27, 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 tenants are entitled to an order cancelling the four month Notice to End Tenancy dated May 16, 2019?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in May 2012. The present rent is \$2150 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$800 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

Policy Guideline 2A provides as follows:

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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)).

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.

Briefly, the landlord gave the following evidence:

- Her husband is 70 years of age and is finally able to retire. He is getting a knee replacement around the middle of September. She suffers from rheumatoid arthritis and has had both hips replaced. She continues to be in pain and has mobility issues. They can no longer handle all the stairs in their house and need to move to their small condo that has an elevator.
- She and her husband purchased the condo 16 years ago with the intention of moving there in retirement. The rental unit needs accessibility improvements to ease of use.
- They have hired an architect/designer who has drawn up the plans and specifications to make it easier for them to move in the condo.
- The landlord obtained the City of Vancouver building permit for the extensive renovations (at a cost of over \$600). The renovations will be costing the landlords over \$100,000. The plans were attached to the materials produced by the landlord.
- A local general contractor has been selected and construction is schedule to start in October. The landlords hope the renovations will be completed by the end of the year so that they could move in by Christmas.

Briefly, the tenant gave the following evidence:

- He has always been a good tenant and paid the rent on time.
- In 2018 the landlord told them they needed the rental unit so that a sister could move in (the sister was undergoing cancer treatment). They also told them the rent was lower than market value and they required an increase in rent. The tenant produced e-mails sent in the summer of 2018 to support this testimony.
- The tenants were successful in having a 2 month Notice to End Tenancy for landlord use cancelled in a hearing that was held in early October 2018.
- The landlord lives in California. This is the first time the tenant has heard of the landlord retiring their desire to move back to Canada and to occupy the rental property.

Analysis:

After carefully considering all of the evidence I determined that the landlord has established they have a good faith intention to renovate the rental unit and that the renovations require vacant possession. All of the require permits have been obtained. The landlords have incurred the expense of hiring the services of a architect/designer. The renovations are extensive and will be costing over \$100,000.

I determined the landlords are acting in good faith. The renovations are necessary to meet their mobility needs and are far more than cosmetic. I am satisfied there is no ulterior motive. I accept the landlords' evidence that they are in the process of retiring and truly intend to move into the rental unit after the needed renovations are completed. There is insufficient evidence for me to determine the landlords' actions are retaliatory. I determined the landlords are not attempting to avoid their obligations under the Residential Tenancy Act and are not attempting to deceive or defraud the tenants.

I have carefully considered the tenant's evidence and submissions. The tenant was successful in early October 2018 in having a 2 month Notice to End Tenancy set aside. The landlords' situation which forms the basis for the 4 month Notice to End Tenancy dated May 16, 2019 is far different than the situation which gave rise to the previous 2 month Notice to End Tenancy.

As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective September 30, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: August 19, 2019

Residential Tenancy Branch