



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenants' 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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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

Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to 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?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenants started residing in the basement of the landlord's single family residence dwelling in approximately 2006. In approximately 2013, the tenants moved the basement suite to the back suite on the same property. The basement suite which the tenants used to occupy is now occupied by the landlord's eldest daughter and a student.

The landlord posted the Two Month Notice on the tenants' door on August 1, 2019 with a stated move-out date of October 31, 2019. The Two Month Notice stated that the rental unit will be occupied by the landlord or the landlord's close family. The landlord testified that he plan was for his second oldest daughter, who is sixteen years old, to occupy the rental unit. The landlord testified that he wants a private quarters for his second oldest daughter. Further, the landlord testified that there was not sufficient space for his second oldest daughter in the basement suite.

The tenants are requesting the cancellation of the Two Months Notice. The tenants testified that the landlord increased the rent in June of 2018 and then he attempted to increase the rent again in October 2018. The tenants testified that, when the tenants told the landlord that he could not increase the rent twice in one year, the landlord delivered a letter ending the tenancy in March 2019 the following day.

The tenants testified that in March 2019 they requested additional time so that they could complete the purchase of their own property. The tenants testified that the landlord agreed to give them more time but he increased the rent again.

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. 2 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 honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));
- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also that they do not have another purpose or an ulterior establish motive for ending the tenancy.

In this matter the landlord testified that he intends to have his second oldest daughter reside in the rental unit. The landlord's testimony is supported by the Two Month Notice signed by the landlord wherein the landlord stated that he intended to use the property for his close family's use.

The tenants have provided evidence to suggest that the landlord is not acting in good faith. Specifically, the tenants provided evidence showing that the landlord attempted to end the tenancy the day after the tenants objected to a rent increase. I find that this raises the inferences that landlord is attempting to end this tenancy over a dispute regarding the amount of rent rather than a genuine purpose of having a close family

member reside in the rental unit. I find that the tenants have adequately called into question the the good faith intent of the landlord. Accordingly, this shifts the onus to the landlord to establish that they truly intended to do what they said on the notice to end tenancy pursuant to *Residential Tenancy Policy Guideline* No. 2.

However, I find that the landlord has not provided sufficient evidence to establish that to establish that he truly intended to end the tenancy to have his daughter occupy the rental unit. The landlord did not provide any evidence to evidence this intention other than his uncorroborated assertions in the Two Month Notice and his testimony at the hearing. I find that this in not sufficient evidence to satisfy the onus of proof in these circumstances where the landlord attempted to end the tenancy the day after a dispute over a rent increase. Accordingly, I find that the landlord has not satisfied his onus of proving his good faith intention.

For the forging reasons, I grant the tenants' application to cancel the Two Month Notice. The Two Month Notice is hereby cancelled and it is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenants have prevailed in this matter, the tenants are granted reimbursement of the filing fee pursuant to section 72 of the *Act*. To satisfy this order, the tenants may deduct the sum of \$100.00 from ONE future rent payment.

Conclusion

The tenants' application to cancel the Two Month Notice is granted. The Two Month Notice is hereby cancelled and it is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The application for reimbursement of the filing fee is granted. To satisfy this order, the tenant may deduct the sum of \$100.00 from ONE future rent payment.

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: October 27, 2019

Residential Tenancy Branch