



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL OLC PSF RR**

Introduction

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

- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") pursuant to section 49;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62; and
- An order for a reduction of rent pursuant to sections 32 and 62.

The landlord attended the hearing. The tenant attended the hearing, accompanied by an advocate, JA ("tenant"). Neither party expressed any issues with timely service of documents.

Preliminary Issue

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's notice to end tenancy for landlord's use was unrelated to the tenants' other issues and dismissed them with leave to reapply at the commencement of the hearing.

Preliminary Issue

The Application for Dispute Resolution filed by the tenant sought to cancel a Notice signed on August 16, 2019. The parties agree this Notice was withdrawn by consent on September 25, 2019. The landlord served the tenant with a second Two Month Notice to End Tenancy for Landlord's Use on September 25, 2019. The tenant did not amend her Application for Dispute Resolution to dispute this second notice, however the landlord did not contest the tenant's oral request to amend her Application for Dispute

Resolution to include disputing the second Notice. The amendment was allowed at the hearing in accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Background and Evidence

The landlord provided the following testimony. The rental unit is the basement suite located in a home that had been owned by the landlord. The tenant was already living in the basement unit when he purchased the home. No new tenancy agreement was signed with the new landlord.

The landlord testified he began to experience financial difficulty with paying his mortgage and put the house on the market. The landlord served the tenant with the first Notice to End Tenancy at this time. When the home finally sold, the new purchaser stipulated in the contract of purchase and sale that the seller will give legal notice to the tenant to vacate the basement suite.

The landlord served the tenant with the Two Month Notice to End Tenancy for Landlord's Use dated September 25th together with the written letter from the purchaser of the property dated September 16th, stating the buyers intend in good faith to occupy the property. A copy of the Notice and the letter were provided as evidence. The new purchasers of the property were not called as witnesses to testify in this hearing and did not provide any documentary evidence.

The landlord testified he did not compensate the tenant with the equivalent of one month's rent when he served the Notice, as he thought this was the new purchaser's obligation. The landlord left the home on September 27th, two days after serving the Notice and has had no further interaction with the tenant or the purchasers of the property since.

The tenant provided the following testimony. She acknowledges being served with the second Notice and accompanying letter on September 25th. The tenant is unsure who her new landlord is, as there are several people upstairs working on renovating the home and none have come to her unit to introduce themselves as her landlord. She believes the home is vacant while the renovations are being done; nobody is living in the home. Up until this hearing, she was under the impression that the insurance broker who left a business card was her landlord as the names were identical, however

the landlord in this hearing advised her that was a coincidence. The tenant testified that she even gave an unknown person a blank cheque for her rent because she has yet to meet her new landlord.

The tenant acknowledges she was not provided with the equivalent of one month's rent anytime after being served with the Notice.

Analysis

I find the tenant was served with the landlord's Notice on September 25th, in accordance with section 89 of the *Act*.

The landlord sought to end the tenancy pursuant to section 49(5)(c) which allows a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.

Section 51(1) of the *Act* states;

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The tenant provided undisputed testimony that the purchasers of the house are renovating it and that they have not made any attempt to introduce themselves to her or personally collect the rent. The tenant also testified that the house is unoccupied. The former landlord, the subject landlord in this application, did not dispute the tenant's testimony as he is no longer affiliated with the house he sold. The new landlords have not provided any evidence to contradict the tenant's testimony that they hadn't move

into the upper floor of the house, leaving me unable to determine conclusively that the new landlords ever intended to use the basement unit for themselves. There is no evidence from the purchaser/landlords or from the former landlord that could support their claim of good faith in seeking to end the tenancy.

Good faith is defined in Residential Tenancy Branch Policy Guideline PG 2A as follows:

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 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.

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.

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. The new landlords have not provided any evidence to dispute the tenant's observations that the home is unoccupied. While it is possible the landlords intend to move in after renovating the home, it is also reasonable for the tenant to postulate that they intend on reselling the property or re-renting it at a higher cost. Without evidence from the new landlords, I cannot determine that their motives for ending the tenancy. Consequently, the tenant's application succeeds in raising doubt as to the landlord's good faith in ending the tenancy.

Secondly, the parties agree the tenant was not given the equivalent of one month's rent as compensation for ending the tenancy as required by section 51. As neither the landlord in this case and the new landlords have compensated the tenant, I find both landlords are in contravention of section 51. For this reason and for the failure of the new landlords to satisfy me of their good faith requirement in ending the tenancy, I cancel the Two Month Notice To End Tenancy for Landlord's Use issued on September 25th.

Conclusion

The landlord's Two Month Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

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 28, 2019

Residential Tenancy Branch