



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0600512 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 24, 2019 (2 Month Notice) and to recover the cost of the filing fee.

The tenant, a support person for the tenant JN, the owner of the landlord numbered company, KW (owner), the agent for the owner, DW (agent), and the spouse of the owner, YW (spouse) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties did not have any witnesses to present at the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

Neither party raised any concerns regarding the service or receipt of documentary evidence. I find the parties were sufficiently served as required by the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the landlord name should have been the numbered company and not KW, the owner of the numbered company. As a result, and pursuant to section 64(3)(c) of the Act, the application was amended to reflect the correct name of the landlord, the numbered company.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that a month to month tenancy began on February 1, 2014. The parties agreed that monthly rent was previously \$1,050.00 per month and is currently \$1,119.30 per month and is due on the first day of each month.

The parties agreed that the landlord served a 2 Month Notice on the tenant on dated September 24, 2019. The reason listed on 2 Month Notice states “The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child: or the parent or child of that individual’s spouse”. The effective vacancy date listed on the 2 Month Notice is January 31, 2020.

The tenant filed their application to dispute the 2 Month Notice on October 7, 2019. In the tenant’s application, the tenant writes that the notice given by the landlord is “suspect and not credible”, and questions the good-faith requirement of the 2 Month Notice under the Act as a result. The tenant alleges that the 2 Month Notice is being used for financial gain when compared to the landlord’s other rental unit next door, the address of which has been included on the cover page of this decision for ease of reference (other unit). The owner confirmed that the other unit rented for \$1,900.00 per month as of June 16, 2019, compared to the tenant’s current rent of \$1,119.30.

There is no dispute that the landlord has owned the rental unit for the past five years and that the other unit was vacant for months up until June 16, 2019, when a new tenancy agreement was signed for the other unit. The owner testified that they plan to live in the unit for a few months of the year as the weather is better and it is quiet. The owner also testified that they retired seven years ago and plan to live there part-time. The owner confirmed that if they sell their current family home in Surrey, they do not know where they would purchase a new home. The owner testified that they plan to live on Bowen Island for the summer months.

The owner and agent stated that they were at the other unit this past summer. The owner stated that they were there 9-10 times but could not recall any of the dates. The agent stated they were also at the other unit but could not recall a specific date and speculated that it was either the end of May or beginning of June of 2019.

The agent also presented one email sent to the tenant, which reads in part that the owner wishes to use the unit as their home with the owner's spouse. There is no indication in that email that the home will be a vacation home, and states in part:

“my parents wishes to retire and would love to live in quite places such as bowen island and would like to make a place they call home.”

The tenant testified that there are 16-18 stairs to access the rental unit and is a second storey walkup unit and that the unit is located near a gym, across the street from a hotel and restaurant and is on a busy street with no setback. The tenant stated that it is not quiet as claimed by the owner and the road is very busy with the bus route in front of the rental building. The tenant also stated that the owner and their spouse would have a hard time with a lack of medical care on Bowen Island and that aging people are leaving Bowen Island and not looking to retire there. The owner stated that they have no problems with stairs.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find the tenant filed their application on time to dispute the 2 Month Notice as the tenant received the 2 Month Notice on September 24, 2019, and disputed the 2 Month Notice on October 7, 2019, which is within the 15-day timeline to dispute the 2 Month Notice.

When a tenant disputes a 2 Month Notice on time, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice and call into question the “good faith” requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

I have carefully considered all of the evidence and testimony before me and agree with the tenant that the 2 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. I find the landlord has provided contradictory and vague testimony, which does not support the reason stated on the 2 Month Notice. For example, I find the owner and agent did not object to the tenant's testimony that location of the rental unit is not quiet, yet the owner claims they want to spend the summer months there because it is quiet. In addition, the landlord claims they wish to retire on Bowen Island yet the owner retired seven years ago, so I find the timing of this 2 Month Notice to be suspect, especially given that the landlord entered into a new tenancy agreement as of June 16, 2019 for almost \$800.00 month per month for the other unit, when the landlord could have moved into that unit after it was left vacant for months before accepting a new tenant.

Furthermore, I afford the testimony of the owner and agent very little weight as I find that neither the owner or agent could provide specific dates that they were at the rental unit, yet the owner claims to have been there 9-10 times over the past summer. Therefore, I prefer the evidence of the tenant over that of the owner and agent as the tenant was much more specific and provided much more detail than the owner and agent did.

Therefore, on the balance of probabilities, I find it more likely than not that the landlord has not issued the 2 Month Notice in good faith due to insufficient evidence and as a result, **I cancel** the 2 Month Notice dated September 24, 2019.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application was successful, I grant the tenant a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The tenant's application is successful. The 2 Month Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The tenant is granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 18, 2019

Residential Tenancy Branch