



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

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

- a. An order to cancel the two month Notice to End Tenancy dated August 21, 2019 and setting the end of tenancy for November 15, 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 Notice to End Tenancy was served on the Tenant by posting on August 21, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Landlord on September 4, 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 tenant is entitled to an order cancelling the two month Notice to End Tenancy dated August 21, 2019 and setting the end of tenancy for November 15, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on April 16, 2013. The parties have entered into successive one year fixed term tenancy agreements. The recent written agreement provided that the tenancy would start on April 16, 2018 and end on April 15, 2019. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$850 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 rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Policy Guideline 2A includes the following:

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.

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The landlord gave the following evidence:

- The fixed term tenancy agreements entered into by the parties always contained a provision that the tenant would vacate at the end of the fixed term. The landlord was unaware of the Policy change to the RTO which limited the use of this term. They have no desire to continue with the tenancy.
 - The landlord has attempted to help the tenant find alternative accommodation but he has refused to look for another residence.
 - The landlord and wife find due to old age they are battling cancer and other various health issues. With such matters at hand it is difficult to continue to manage the rental unit despite their best intentions. The landlord is scheduled to have an operation on his kidney in the near future. His wife is a cancer survivor.
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The tenant gave the following evidence:

- My landlords testified the landlord is not acting in good faith. The house has 6 bedrooms plus his basement suite. Only the 2 landlords and 1 tenant live upstairs. Since Dec/18, the landlords have changed their reasons to evict me from renting it to their friend, to renovating to accommodating an adult child.
- They are trying to make me leave by a) failing to maintain safety equipment (ex. 2); b) shining lights in my window and banging on the floor after midnight; c) making unscheduled visits.

The landlord responded by providing the following evidence:

- They wish to use the rental unit for their own usage.
- The failing health of the landlord makes it impossible to deal with the issues of the tenancy without help.
- The delay in replacing the carbon monoxide detector was the fault of the alarm company.
- The light disturbances are caused by the neighbor motion sensor lights.
- The noise alleged is not accurate.
- The use of a propane torch to burn grass is not unusual.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The Policy Guidelines provide that the landlord has the burden of proof to establish sufficient cause where the “good faith” of the landlord has been brought into question.
- The landlord failed to provide an adequate explanation as to how they intend to use the rental unit for their own use.
- The landlord failed to provide a sufficient explanation as to why it is necessary to end the tenancy because of their ill health.
- The relationship has deteriorated between the parties and the 2 month Notice to End Tenancy suggests there is an ulterior motive other than a desire to occupy the rental unit.
- The property is large with 6 bedrooms. The landlord failed to provide sufficient evidence to prove that they intend to occupy the rental unit.

Determination and Orders:

As a result I determined the landlord failed to establish sufficient cause to end the tenancy. I ordered that the Notice to End Tenancy dated August 21, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application I order that the landlord pay to the tenant cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

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: November 14, 2019

Residential Tenancy Branch