



Dispute Resolution Services

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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 had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Name Correction

The landlord testified that the tenant's application stated the wrong last name for the landlord. I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's Two Month Notice pursuant to section 49?

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

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenant testified that they have been living at the rental unit for six years. The tenant claims that the landlord raised the rent twice without providing proper notice.

The tenant testified that he received the Two Month Notice to end tenancy on October 15, 2019. The Two Month Notice was dated October 11, 2019 and it had a stated move-out date of December 31, 2019. The stated grounds for ending the tenancy was that the landlord or the landlord's close family intended to occupy the rental unit.

The landlords testified that the landlord's adult son intended to move into the rental unit. The adult son provided affirmed testimony confirming his intention to occupy the rental unit. The son testified that he lives in a crowded, shared accommodation and he is ready to move into his own residence.

The tenant questioned the good faith of the landlord's stated intention. The tenant testified that the Two Month Notice was issued within days of the furnace repair in October 2019. The tenant also argued that the landlord retained a property management company in August 2019 in preparation for ending the tenancy. The landlord denies this claim.

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 as 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 their adult son intends to 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 use or his close family's use.

However, I find that the good faith intent of the landlord has been called into question by tenant's testimony that the Two Month Notice was issued almost immediately after the furnace was repaired. The timing of the landlord's issuance of the Two Month Notice shortly after the tenants' repair request tends to make the issuance of the notice to end

tenancy appear retaliatory. I find that this timing of the issuance of the Two Month Notice does call the good faith intent of the landlord into question.

Since the good faith intent of the landlord has been called into question, the landlord has onus to prove that they truly intended to occupy the rental unit they did do not have another purpose or an ulterior establish motive for ending the tenancy pursuant to *Residential Tenancy Policy Guideline No. 2*

In this matter, I find that the landlord has satisfied this burden of proof. The landlord has presented their adult son as a witness and he has affirmed that he did intend to occupy the rental unit. I find that this is sufficient corroboration of the landlord's stated intention.

Accordingly, I dismiss the tenants' application to cancel the Two Month Notice. Since the tenants' application to cancel the Two Month Notice was not successful, I also dismiss the tenants' application for recovery of the filing fee pursuant to section 72.

Section 55 of the *Act* requires that, when a tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy is dismissed, I must grant the landlord an order of possession if the landlord issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession. Based on the tenant's testimony that they have resided in the rental unit for six years and based upon the tenant's testimony that it would be difficulty to vacate the rental unit by the stated move out date of December 31, 2019, I find that a reasonable date to end the tenancy is February 15, 2020 at 1:00 p.m and I accordingly issue an order of possession for landlord for that date pursuant to sections 55(3) and 66(1) of the *Act*.

Conclusion

The tenants' application is dismissed.

I find the landlord is entitled to an order of possession effective at **1:00 p.m. on February 15, 2020**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 21, 2019

Residential Tenancy Branch