



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 a tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property*. The tenant appeared and the named landlord was represented by his wife and co-owner of the property, and another person acting as the landlord's representative.

The hearing was originally set for January 14, 2020; however, the tenant requested an adjournment and the request was granted. An interim decision was issued on January 14, 2020 and should be read in conjunction with this decision.

As seen in the interim decision, the tenant had requested the adjournment, in part, so that she may obtain representation. When the hearing reconvened, the tenant was without representation. The tenant stated that she had made attempts to obtain representation during the period of adjournment but was unsuccessful. The tenant did not request another adjournment and the hearing proceeded.

During the period of adjournment, I was in receipt of additional documents from the tenant. I explored whether those documents were served upon the landlord(s) and the landlord indicated that it was likely she was in receipt of the additional documents as the tenant had served additional documents several times. I also heard that the landlord was in receipt of additional evidence from the tenant that I had not received. The tenant indicated she had difficulty going to the Service BC office to submit the additional evidence for my consideration due to the weather and her mobility issues. I instructed the tenant to provide her position orally during the hearing so that both the landlord and I would be hearing the same evidence and position.

I also confirmed that the landlord's evidence package had been served upon the tenant prior to the original hearing date.

The tenant continues to occupy the rental unit and the tenant confirmed that she seeks to continue the tenancy for the time being. As such, the primary issue to resolve is whether the tenancy is ending due to the notice to end tenancy issued by the landlord. The other remedies sought by the tenant in filing this Application for Dispute Resolution were not related to the primary matter to resolve and I dismissed those other remedies with leave to reapply pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure. Rules 2.3 and 6.2 are provided below for the parties reference:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

Issue(s) to be Decided

Should the *2 Month notice to End Tenancy for Landlord's Use of Property* dated December 4, 2019 be upheld or cancelled?

Background and Evidence

The tenancy started in September 2009 and the monthly rent was originally set at \$850.00 payable on the first day of every month. The monthly rent was reduced shortly after the tenancy commenced to \$775.00 per month and it has remained at \$775.00 per month.

The rental unit was described as being a cottage approximately 600 sq. ft. in area. There is a main house on the property that is occupied by the landlords.

The male landlord (referred to by initials AH) issued and served the tenant with the subject *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") on December 4, 2019. The 2 Month Notice has an effective date of February 29, 2020 and the reason for ending the tenancy, as indicated on the 2 Month Notice, is:

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).

On December 9, 2019 the landlord AH wrote a letter to the tenant which states, in part:

"We...want to clarify that we served the notice only due to our need to use the dwelling for our own personal use."

The tenant filed to dispute the 2 Month Notice on December 17, 2019, which is within the time limit for doing so, and in the details of dispute the tenant took the position the landlord had not issued the 2 Month Notice in good faith and that the landlord had not indicated the intended use of the rental unit.

During the hearing, the landlord's representative stated the landlords intend to use the rental unit while they renovate their residence, the main house on the property. The landlord's representative stated the renovations planned for the main house are so extensive that they must have vacant possession of the main house to accomplish the planned renovations. The renovations planned include installing flooring, renovating a bathroom, and replacing countertops in the kitchen. The renovations have not been started but they are to commence shortly after AK returns home from working in another province in mid-March 2020.

The documentary evidence provided by the landlords for this proceeding were copies of: the tenancy agreement; the move-in inspection report; the 2 Month Notice; the letter of December 9, 2019; and an authorization letter appointing the landlord's representative to act on the landlord's behalf for this proceeding.

The tenant expressed that she was surprised to hear the landlord's reasons for wanting to end the tenancy since the main house is a large, beautiful house built by the landlord approximately 11 years ago and it is finished very well. The tenant stated that she believes the landlords are motivated to end her tenancy because she is paying low rent and that many owners in their area are using cottages or secondary living units for short

term vacation rentals which garner 2 - 3 times the income than that from a long term renter such as herself. The tenant described a conversation she had with AK in the fall of 2019 whereby he indicated he wanted to retire from working soon and that he did not have a pension so there were concerns over finances in doing so.

The landlord in attendance at the hearing (referred to by initials CH) confirmed that they moved into the main house in 2008 and that it was constructed in 2008 but that there was still some unfinished flooring. CH denied that the landlords intend to re-rent the unit or use the rental unit for short term vacation rentals during that time. CH stated that AH is 60 years old and he intends to do the renovations himself and that they want to accomplish this before AH gets much older.

The landlord's representative stated the landlords' plan is to use the rental unit for 1 to 2 years while renovating the main house. The landlord's representative indicated that the rental unit but may eventually be used to accommodate the landlord's guests when they come to visit.

I noted that the tenancy agreement indicates the landlord is CH but that the 2 Month Notice was issued by AH. CH confirmed that both she and AH are owners of the property. As such, I was satisfied that both CH and AH meet the definition of "landlord" under section 1 of the Act and reference to landlord or landlords refers to CH or AH or both.

Analysis

Section 49 of the *Residential Tenancy Act* (the Act) allows a landlord to end a tenancy if the landlord intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit. To end a tenancy under section 49 of the Act, a landlord must serve the tenant with the appropriate notice to end tenancy, in the approved form. Upon review of the 2 Month Notice served upon the tenant, I am satisfied that it is in the approved form and it was duly completed by the landlord.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The tenant disputed the 2 Month Notice within the time limit for doing so, calling into question the landlord's good faith intention. As such, the landlords have the burden to prove the tenancy should end for the reason provided on the 2 Month Notice.

Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* is intended to help parties understand issues that are likely to be relevant where a 2 Month Notice comes under dispute and provide parties with information or describe evidence that is likely to assist them in supporting their position. The policy guideline provides the following with respect to the “good faith” requirement in ending a tenancy for landlord’s use of property:

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.

[My emphasis underlined]

It would appear the first time the landlords communicated their intention to renovate the main house and use the rental unit for themselves during the renovation was as during the hearing. The landlord's letter of December 9, 2019 provided a very vague statement that they were going to use the rental unit for their "personal use" without further description of what that "personal use" entailed. Nevertheless, I have considered the landlord's reason, as submitted orally during the hearing. Upon consideration of the landlord's reason, I find they have failed to meet their burden to prove they truly intend to use the rental for the reason they provided during the hearing for the following reasons.

- The landlord's representative described the landlords as having intentions to commence a significant renovation that required vacant possession of the main house. Where a renovation is so significant that it requires vacant possession, I would expect to see permits, drawings, estimates or quotes, and none were provided in this case.
- I heard the landlord's residence is rather new, large and beautifully finished and the landlords did not provide any photographs of the areas or rooms they intend to significantly renovate.
- The landlord's representative indicated that a bathroom will be renovated in the landlord's residence and there was no indication that there is only one bathroom in the landlord's residence, and I find it doubtful that there only one bathroom considering the main house is of newer construction and large.
- The described installation of flooring and countertops do not typically require vacant possession of a residence and the landlords did not provide sufficient description or details as to the reason their intended renovation requires them to vacate their residence to accomplish these tasks.

In light of the above, I find the landlord's oral submissions concerning an intended significant renovation of the main house in the absence of corroborating evidence to be insufficient to prove they intend to occupy the rental unit for at least six months. Therefore, I grant the tenant's request for cancellation of the 2 Month Notice and the tenancy continues at this time.

Since the tenant was successful in her application, I award the tenant recovery of the \$100.00 filing fee she paid for this application. The tenant is provided a Monetary Order in the amount of \$100.00 to serve and enforce upon the landlords. Alternatively, the tenant may deduct \$100.00 from a future month's rent in satisfaction of this award.

Conclusion

The 2 Month Notice dated December 4, 2020 is cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the \$100.00 filing fee from the landlords. The tenant is authorized to deduct \$100.00 from a future month's rent payment in satisfaction of this award.

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: February 5, 2020

Residential Tenancy Branch