



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an application by the tenants pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") issued pursuant to Section 49(3) of the *Act*.

Both parties attended the hearing and confirmed exchange of evidence as submitted to this proceeding. The tenants were assisted by an advocate (the tenant) whom advanced the tenant's side of this matter. Parties were provided a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The parties were further provided opportunity to mutually resolve their dispute to no avail. I find that the landlord was duly served with the tenant's application and evidentiary package in accordance with sections 88 and 89 of the *Act*. The landlord acknowledged serving the tenants with their evidence later than prescribed by the Rules of Procedure. None the less, the tenant testified they had reviewed the landlord's evidence and were able to respond to it. In accordance with Section 71(2)(b) I found the landlord's evidence sufficiently served for the purposes of the *Act*.

The parties agreed that the landlord's 2 Month Notice was served on the tenant on November 25, 2019, for the reason set out by section 49(3) of the *Act*; that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Preliminary matters

The *style of cause* has been amended to reflect the correct last name of the landlord.

Issue(s) to be Decided

Is there sufficient evidence to cancel the landlord's 2 Month Notice to End Tenancy?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The relevant evidence in this matter is as follows. This tenancy started May 15, 2019. Rent was set at \$1200.00 per month due on the 1st of each month in advance. On November 25, 2019 the tenants were served a 2 Month Notice to End Tenancy for Landlord's Use.

The tenant seeks cancelation of the landlord's 2 Month Notice to End Tenancy on the claim it was issued in bad faith upon the landlord learning that one of the two tenants was attending a recovery house. The tenant testified they were previously issued a 1 Month Notice for Cause on November 05, 2019 stating the tenant had engaged in illegal activity having caused or likely to cause damage to the landlord's property. The 1 Month Notice was ultimately withdrawn by the landlord because it was, as they stated, "in error", as reflected by a previous Arbitrator's Decision dated January 14, 2020. The tenant claims the landlord then issued a 2 Month Notice 3 weeks later intended for occupation by the landlord's son in what the tenant claims was a desperate effort to evict the tenants after they confronted the landlord about the particulars of the earlier 1 Month Notice.

The landlord denied the tenant's assertion of bad faith, explaining they always intended their son to occupy the rental unit as they previously had lived "at home", and now that they had a girlfriend desired to move back into the family home from their current residence with their aunt. The landlord testified that subsequent to issuing the 1 Month Notice for Cause they learned of the proper notice to be used to end a tenancy for landlord's use and therefore issued such notice approximately 3 weeks later. The tenant's advocate testified for the tenants that it is not clear in their minds if the landlord's son actually intends to occupy the rental unit, however they feel confident the end goal of the landlord is to evict the tenants.

In support of the 2 Month Notice the landlord testified their son was part owner of the residential property; and submitted a statement dated January 13, 2020 by the referenced aunt, that the landlord's son was currently residing with them for the past 3 months. The aunt's statement stated their nephew (the son) was residing with them to aid their business, however no longer now required for that purpose, with their nephew otherwise occupying a room destined for the aunt's infant.

The landlord further testified they learned of the tenant's stay in a recovery home from the second tenant whom had remaining in the unit. The landlord testified that this knowledge did not play a role in their determination to end the tenancy.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

In this type of matter, when a tenant disputes the landlord's right to end a tenancy for their occupation of a rental unit pursuant to Section 49 of the Act, the onus is on the landlord to prove they issued a valid Notice to End Tenancy for their stated purpose. If the good faith intent of the landlord is called into question, the burden of proof is placed on the landlord to establish they honestly intend to do what they said on the Notice to End Tenancy. In this matter the landlord must show that a close family member truly intends to occupy the rental unit, without dishonest or ulterior motive. **Section 49** of the Act, in the part relevant to this matter, states;

Landlord's notice: landlord's use of property

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Branch Policy Guideline 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention. That is, in the absence of malice with no ulterior motive to defraud or seek an unconscionable advantage. Effectively, again the landlord must establish they truly and honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has disputed the purpose shown on the Notice to End and also the good faith intention of the landlord, which I find has some basis. On a balance of probabilities from the evidence before me, I find that there is sufficient evidence to leave me in doubt about the true intent of the landlord. Specifically, I find that if the landlord's true intent was simply to occupy the rental unit themselves, it is perplexing that the landlord had sufficient knowledge to issue a One Month Notice to End Tenancy for purported illegal activity and damage, which they claim was in error; however, lacked knowledge to utilize a Notice to End Tenancy for Landlord's Use. I find the landlord's use of the One Month Notice to achieve such contrasting outcomes does not make sense. I also find that hearsay statements of a third party (in this matter the aunt) respecting circumstances of a fourth party (in this matter the landlord's son) are particularly unreliable evidence given the evidence which could have been made available by the direct testimony or written statement from the landlord's son as to their intention to occupy the rental unit. The landlord failed to provide any evidence from their son showing that the rental unit would be occupied by them, and the son did not appear at the hearing as a witness.

As result of all the above I find the evidence is not sufficient to establish the landlord's purpose as shown on the 2 Month Notice: that the rental unit would be destined occupied by the landlord's son. While the landlord has provided an explanation for the 2 Month Notice issued on November 25, 2019, I find the explanation to be somewhat unconvincing when compared to the evidence presented by the tenant. Even if I were to accept the landlord's premise respecting occupation by their son, I find the landlord has not supported their burden to prove their 2 Month Notice was issued in good faith.

Conclusion

The tenant's application is granted. The 2 Month Notice dated November 25, 2019 is of no continuing force or effect. The tenancy continues 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: February 04, 2020

Residential Tenancy Branch