



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNR**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for regular repairs to be done to the rental unit pursuant to section 32;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46 and
- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I determined that the issue of repairs to the rental unit were not sufficiently related to the applications to cancel notices to end tenancy and I dismissed them with leave to reapply.

The landlord advised that rent for the month of December was paid and that he considers the 10 Day Notice for Unpaid rent cancelled. I confirmed with the landlord that he was content to withdraw that Notice at the commencement of the hearing.

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute

during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I issued this decision based on the testimony of the parties and the evidence presented.

Issue(s) to be Decided

Should the Two Month's Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is the basement unit in the landlord's house. The parties did not sign any tenancy agreement however the tenancy began approximately 2 years ago with rent being set at \$1,300.00 per month payable on the first day of each month. A security deposit of \$650.00 was collected by the landlord which he continues to hold.

The landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use on January 1, 2020 by putting a copy in the tenant's mailbox and by taping a copy to the tenants door the same day. The tenant acknowledges receiving the Notice the same day. The reason for ending the tenancy stated on the notice reads: *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 date provided on the Notice is March 1, 2020.

The landlord provided the following testimony. He is not divorced from his ex-wife, however he remains separated from her. He is currently in another relationship with a common-law partner. His ex-wife received a Two Month's Notice to End Tenancy for Landlord's Use from her landlord, prompting her to seek accommodation for her and her son in the basement rental unit currently occupied by the tenant. A copy of the ex-wife's Notice was provided as evidence. The landlord testified the son planning to move in is one of his 3 sons. One was living with him and recently moved out with his girlfriend,

the other is married and living on his own and the last son is living with the landlord's ex-wife. To corroborate his account of the ex-wife and son moving in, the landlord provided a letter from the ex-wife.

The landlord testified that the tenant is fighting too much. The police were called on occasion. The police told the landlord not to go to the tenant's rental unit and have no contact with the tenant. He voiced his concerns that he would be seen as the 'bad guy' by the police and he simply wants the tenant to move out. The landlord testified that he is 100% guaranteed sure that the ex-wife and son were going to move in and that the tenant must move out by March 1st. Neither the ex-wife nor the son were called as witnesses by the landlord.

The tenant points out the following issues with the landlord's argument. The Two Month's Notice to End Tenancy for Landlord's Use issued to the ex-wife indicates the ex-wife and the ex-wife's landlord share the same address. The landlord confirmed that the ex-wife and the landlord are in a roommate situation. The tenant notes that the letter supplied by the ex-wife indicates she was given a notice to move out of her place due to an increase of rent which she cannot afford. The tenant questions the legitimacy of both the ex-wife letter and the Two Month's Notice to End Tenancy for Landlord's Use given to the ex-wife.

The tenant also alleges that the son living upstairs with the landlord is the son that apparently lives with the ex-wife. The tenant called her own son as a witness who testified that there is a son living upstairs. The landlord vehemently denied this claim, saying this is the son who moved out with his girlfriend recently.

Lastly, the tenant testified that the landlord seeks to end the tenancy because she had successfully disputed a notice of rent increase given by the landlord that would have increased her rent from \$1,300.00 per month to \$1,500.00 per month. A copy of the decision of the arbitrator cancelling the notice of rent increase was provided as evidence. The landlord acknowledges receiving the decision only days before serving the tenant with the Two Month's Notice to End Tenancy for Landlord's Use.

Analysis

Residential Tenancy Policy Guideline 2A: [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member] provides guidance for landlords and tenants to understand the requirements for ending a tenancy pursuant to section 49.

Section 49 of the Residential Tenancy Act (RTA) 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. "Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.

The landlord has testified he is currently involved in a common-law relationship. The 'close family member' the landlord wishes to occupy the rental unit is an ex-spouse, not the current one. Therefore, I am also not satisfied the ex-wife qualifies as a 'close family member' as defined by section 49 of the Act. With respect to ending the tenancy so the ex-wife can move in, I find the Notice invalid.

However, since the child of the landlord will always be included in the definition of 'close family member', whether the son will be occupying the rental unit is the issue to be determined.

The tenant has questioned the landlord's good faith in ending the tenancy. 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 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 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*.

I find the tenant's dispute to the good faith of the landlord has some credence, given the fact that he issued the Two Month's Notice to End Tenancy for Landlord's Use within days of receiving the arbitrator's decision to disallow a rent increase. Although it may be simply coincidence, the ending of the ex-wife's tenancy at the same time the landlord lost his attempt to increase the tenant's rent is a cause for suspicion.

Second, the landlord had the opportunity to provide documentary evidence to corroborate his assertion that the ex-wife and son were going to move in. The landlord has not provided any evidence of booking movers to facilitate the move; changing of utility bills from one location to another; or even an affidavit or written statement from his son whom he says is going to move in. Most importantly, the son was never called as a witness to give affirmed testimony.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice. I find the landlord has provided insufficient evidence to meet the burden of establishing that his son is truly going to occupy the rental unit. I am satisfied on a balance of probabilities that the tenant has sufficiently shown the landlord does not have an ulterior motive for ending the tenancy. For this reason, I dismiss the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property dated January 1, 2020 is dismissed. The tenancy shall continue until it is 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 20, 2020

Residential Tenancy Branch