



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL, OLC, LRE

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 29, 2020 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

"Tenant SC" did not attend this hearing, which lasted approximately 25 minutes. The landlord, tenant AS ("tenant") and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to represent her son, tenant SC (collectively "tenants"). The tenant confirmed that the tenants' agent had permission to speak on behalf of both tenants at this hearing.

The hearing began at 11:00 a.m. with the tenant, the tenants' agent and I present. The landlord called in at 11:03 a.m. I informed the landlord about what occurred in her absence. The hearing ended at 11:25 a.m.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' agent confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence.

The tenants' agent confirmed that the tenants personally received the landlord's 2 Month Notice on January 31, 2020. The landlord confirmed the above service method and date. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 2 Month Notice on January 31, 2020.

The tenants' agent confirmed that the tenants were not seeking to dispute a rent increase. I notified him that this portion of the tenants' application was dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to include that it is a basement unit. The tenants filed an amendment for same. The landlord confirmed that the rental unit is a basement suite. Neither party raised any objections to this amendment during the hearing.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for landlord's use of property?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order restricting the landlord's right to enter the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2019. Monthly rent in the amount of \$1,000.00 is payable on the 15th day of each month. A security deposit of \$500.00 was paid by the tenants and the landlord continues to retain this deposit. No written tenancy agreement was signed, only a verbal agreement was reached. The tenants continue to reside in the rental unit. The rental unit is the basement suite of a house, where the landlord occupies the upper floor of the same house.

The tenants seek to cancel the landlord's 2 Month Notice. The landlord seeks an order of possession based on the 2 Month Notice.

A copy of the landlord's 2 Month Notice was provided for this hearing; however, only the first page was provided, not the second page. Both parties agreed that the effective move-out date on the notice is March 31, 2020. Both parties agreed that the following reason was provided by the landlord to end this tenancy on page 2 of the notice:

- *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 landlord said that she issued the 2 Month Notice to the tenants because the police keep bothering the landlord. She said that the tenant's son, tenant SC, has a criminal record charge. She stated that he gets into fights at home with his girlfriend and beats her. She claimed that she and her children are scared of tenant SC and the tenant told her that she is not happy living at the rental unit. She explained that this is the main reason why the notice was issued to the tenants.

The tenants' agent stated that the landlord did not issue the 2 Month Notice for a valid or permissible ground. He said that the notice indicates it was issued for personal use of the rental unit. He maintained that the landlord testified that she issued the notice because she is scared for her safety. He claimed that the notice was not issued in good faith.

The tenants also seek an order requiring the landlord to comply with section 29 of the *Act*, by providing 24 hours' written notice before entering the rental unit, unless there is an emergency. The landlord agreed to this order during the hearing. The tenants' agent stated that the landlord entered the rental unit, without notice, multiple times by using her own spare key. The landlord agreed that she did the above, stating it was her mistake because she did not know, and she was trying to get an electrician to do repairs inside the rental unit.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member intend, in good faith, to occupy the rental unit.

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants received the notice. The tenants received the 2 Month Notice on January 31, 2020 and filed their application to dispute it on February 6, 2020. The tenants' application is within the 15-day time limit under the *Act*. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states the following, in part, about 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...

...

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.

I find that the landlord has ulterior motives for issuing the 2 Month Notice and it was not issued in good faith. The landlord testified that she issued the 2 Month Notice to the tenants because her and her children are afraid of tenant SC, she was concerned about the police and a criminal record charge, as well as violence at the rental unit.

The landlord did not indicate who, if anyone, would be moving into the rental unit, how long they would be residing there, or any other such details. The 2 Month Notice, section 49(3) of the *Act* and Residential Tenancy Policy Guideline 2A all require that the landlord or a close family member intends, in good faith, to occupy the rental unit for at least six months.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met her burden of proof to show that she or a close family member intends to move into the rental unit in good faith.

Accordingly, I allow the tenants' application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated January 29, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

I order the landlord to abide by section 29 of the *Act*, to provide the tenants with proper notice, prior to entering the tenants' rental unit. The landlord agreed to this during the hearing.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated January 29, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

I order the landlord to abide by section 29 of the *Act* and provide proper notice to the tenants prior to entering the rental unit.

The remainder of the tenants' application is dismissed without leave to reapply.

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: April 16, 2020

Residential Tenancy Branch