



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on May 8, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the Notice on March 5, 2020. The Landlord issued the Notice for the following reason:

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 further selected the ground that she (or spouse) would be moving in

The Landlord's agent was present at the hearing, but the Landlord was not. In the hearing, the Landlord's agent was asked to explain why the Notice was issued, and he stated that the Landlord wants to personally move into the property. The Landlord's agent stated he has no idea where the Landlord is living now or what her reasons are for moving. The Landlord's agent was asked to elaborate further, but he did not have anything else to add. The Landlord's agent did not present any documentary evidence in support.

The Tenants stated that they believe the Landlord has issued this Notice in bad faith. More specifically, the Tenants stated that they believe the Landlord is trying to sell the rental unit, and is trying to get rid of them to make the sale easier. The Tenants stated that the Landlord has consistently shown a clear intention to sell, rather than to move in.

The Tenants stated that they have lived in this rental unit for several years now, and around May 2018, the Landlord decided that she was going to list the property for sale. The Tenants stated that the unit remained for sale until around December 2019. The Tenants stated that the Landlord had an aggressive pricing strategy, where she listed the condo for \$100,000 below assessment in order to expedite the sale. The Tenants also pointed out that over the 1.5 years the condo was listed, the Landlord continued to lower the price, which shows a clear intention to sell.

The Tenants provided a variety of documentary evidence showing listing details, communications with the Landlord, her agents, the Notice's to Enter (for real estate showings), and evidence to show that the Landlord has another large residence in the Lower Mainland.

The Tenants pointed out that while the property was listed, the Landlord even replaced the flooring to make the unit more appealing. The Tenants stated that this is the 3rd 2 Month Notice they have received in the last few months, for exactly the same reason. The Tenants stated that they got the first Notice on December 16, 2019, the second was on January 30, 2020. The Tenants filed to dispute those Notices, and a hearing

was held. A copy of the decision was provided, and it lists that the Landlord did not attend the hearing, and both of the Notices were cancelled, as of March 3, 2020. Subsequently, the Landlord issued a 3rd Notice (authored the same day), which is the subject of this hearing.

The Tenants confirmed that there have not been any real estate showings since they started getting the Notices but they do not feel the Landlord is actually wanting to move in. The Tenants pointed out that the Landlord owns a large house in the Lower Mainland, and it does not make sense that she would want to move into this small condo, especially after trying for so long trying to sell it. The Tenants explained that by doing some research, they found the Landlord is affiliated (president) of a company based out of Nevada, but her mailing address is the large house in the Lower Mainland, which shows she maintains a residence in a much larger house nearby.

The Landlord's agent was given a chance to respond the above allegations, including the allegations of bad faith regarding the intentions behind the Notice. The Landlord did not elaborate much and stated that after not being able to sell the property, she decided to move in herself. The Landlord's agent again reiterated that he has no idea where she currently lives. The Landlord's agent stated that they forgot about the last hearing, which is why no one showed up and why the previous Notices were cancelled.

Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that she intends in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord, her agents, and the Tenants. The Tenants are alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because she wants them out so that she can more easily sell the condo.

The burden of proof rests with the Landlord to demonstrate that she, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2 states the following:

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 establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I have considered the testimony and the evidence on this matter, in totality, and I note that the Landlord's agent, when asked to explain why the 2-Month Notice was issued, was very brief and appeared somewhat evasive with his answers regarding where the Landlord currently lives, and what her intentions are, particularly given this is the 3rd Notice, issued for the same reason within the last 3 months, and also considering the Landlord has been trying to sell the condo for approximately 18 months. The Landlord's agent provided very little context or explanation regarding the Landlord's intentions and that she does not have an ulterior motive (selling the property).

The Landlord's agent stated the Landlord is planning on moving in now that the unit didn't sell. However, the Landlord's agent did not elaborate further, and appeared to either not have further information, or not want to provide further information to corroborate or add context to this Notice or the Landlord's intentions and actions leading up to this hearing.

In this case, the onus is on the Landlord to substantiate the Notice and importantly, her good faith intentions. I find that the Landlord has not provided sufficient evidence or testimony to support her good faith intentions, especially given she has been actively trying to sell the rental unit for an extended period of time, which is not the ground she identified on the 2-Month Notice as the reason to end the tenancy. The Landlord's agent was also unclear and somewhat evasive regarding where the Landlord currently lives and what her plans are.

Therefore, the Tenants' application is successful and the Notice received by the Tenants on March 5, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenants' application is successful. The Notice is cancelled.

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: May 11, 2020

Residential Tenancy Branch