



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT-CNQ

Introduction

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

- more time to make an application to cancel the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 21, 2020 ("2 Month Notice"), pursuant to section 66; and
- cancellation of the landlords' 2 Month Notice, pursuant to section 49.

The two "landlords," "male landlord" and female landlord ("landlord"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 31 minutes.

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

The tenant confirmed personal receipt of the landlords' 2 Month Notice on March 21, 2020. The landlord confirmed service using the above method on the above date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice on March 21, 2020.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct that it is not to dispute a Two Month Notice because the Tenant Does Not Qualify for Subsidized Rental Unit. The tenant mistakenly applied online to dispute the qualification for a subsidized unit. However, at the hearing both parties made

submissions regarding the landlords' notice as it related to their use of the rental unit. Both parties agreed that the landlords issued the notice for landlords' use of property and the tenant received that notice. I do not find prejudice to either party in making this amendment.

Issues to be Decided

Is the tenant entitled to more time to make an application to cancel the landlords' 2 Month Notice?

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on August 15, 2015. Monthly rent in the amount of \$1,950.00 is payable on the first day of each month. A security deposit of \$975.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is a house.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the effective date on the notice is July 31, 2020. Both parties agreed that the landlords identified the following reason for seeking an end to 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).*
- *Please indicate which family member will occupy the unit.*
 - *The child of the landlord or the landlord's spouse*

The tenant testified regarding the following facts. She applied late, on April 8, 2020, to cancel the landlords' 2 Month Notice. When she received the 2 Month Notice, she was shocked that she had to move because she felt it was unsafe, due to the current covid-19 pandemic. The pandemic and tenancy changes were all over the news, which the landlords must have seen. When she called the Residential Tenancy Branch ("RTB") after the weekend when she received the notice, she was told to wait to see the tenancy changes to be enacted. She was also told by the RTB not to move if it was unsafe for her to do so. She found the changes to the tenancy laws on April 6, 2020, because she was working as an essential worker during the pandemic. She called the RTB again after finding the tenancy law changes. She was told by the RTB that she had to dispute the 2 Month Notice but try to resolve the issue with the landlords first, which she did, to no avail.

The landlord testified regarding the following facts. The landlords issued the 2 Month Notice to the tenant because the landlords' son and daughter-in-law (collectively "children") intend, in good faith, to move into the rental unit. On March 19, 2020, the landlords' daughter-in law received a clean bill of health for her pregnancy, in expecting the couple's first child ("grandchild"). The landlords' children have been living with the landlords for a year. Both children are first responders, working shift work, during the pandemic. The landlords and their children currently share laundry facilities at their home. It is not safe for the landlords' children and their grandchild to be living with the landlords, who are both over 60 years old, in a multi-generational house, given the pandemic, the children's shift work, and the grandchild's sleep needs. The landlords' children want their own space and a healthy home to raise their child. The landlords went to the RTB on March 21, 2020, obtained the 2 Month Notice, it was still effective to serve it during that time, and no tenancy laws had been changed. The landlords did not know the future law changes that would be made. They gave the tenant four months' notice to move out because they wanted to give her lots of time to find a place. The effective date on the 2 Month Notice only allows the landlords' children to move in and set up their home and nursery, with one month until the due date for the birth of the grandchild. The first email that the landlords received from the tenant was on April 6, 2020. The landlords thought that the tenant had accepted the 2 Month Notice and would be moving out. There are lots of places available for the tenant to rent and she still has two months to find a place.

The tenant stated the following facts. She disputes the landlords' 2 Month Notice. She believes that the rental unit will be used for the landlords' children to move in. She cannot move because she cannot find a place and it is not safe to move during the pandemic. She will move as soon as she can find a place, although she has been

looking, with no prospects so far. It is very expensive to move. The landlords' children just recently moved in with them at their home.

Both parties agreed to the following facts. They have had a good relationship throughout this tenancy. No previous RTB hearings occurred between them, nor were any other notices to end tenancy issued by the landlords to the tenant. The rent has not been raised by the landlords since the beginning of this tenancy, in August 2015.

Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after she receives the notice. The tenant received the 2 Month Notice on March 21, 2020 and filed her application to dispute it on April 8, 2020. Therefore, the tenant is outside the fifteen-day time limit under the *Act*.

However, the tenant applied for more time to make an application to cancel the 2 Month notice. I grant the tenant more time to make her application, pursuant to section 66 of the *Act*. I accept that exceptional circumstances existed, causing the tenant to file her application two days late, on April 8, rather than April 6, 2020 (given that the deadline of April 5, 2020, fell on a Sunday, when the RTB offices are closed). This is not past the effective date of the notice of July 31, 2020. I accept the tenant's submission that the law was changing, as Ministerial Order M089 was issued on March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020. I accept the tenant's submission that she waited to see the tenancy law changes before making an application and she did not want to move if it was unsafe. I find that the tenant made an application as soon as she could, given that she is an essential worker and working during the pandemic.

Accordingly, where the tenant applies to dispute the notice, the burden of proof is on the landlords to prove the reason on the notice, based on a balance of probabilities.

Section 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 of the landlord intends in good faith to occupy the rental unit.

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

I accept the landlords' testimony and written evidence that their son and daughter-in-law intend, in good faith, to move into the rental unit. I find that the landlords have no ulterior motive to end this tenancy. The landlords both provided affirmed testimony that their children intend to move into the rental unit in order to provide a safe home for them and their first child. I accept the landlords' submissions that their children are both first responders and it is not safe for them and their new baby to live with the landlords, who are both over 60 years old, given the current covid-19 pandemic. The landlords confirmed that shared laundry, as well as long work shifts, would not be a safe or ideal environment for them, their children and their grandchild. The landlords' children also want their own space and privacy to raise their child. The landlords provided written letters of intention from their children, indicating that they wanted to move into the rental unit, in good faith, in order to provide a safe home for them and their first child. These letters were not questioned or disputed by the tenant.

Both parties agreed that they have had a good relationship throughout this tenancy. Both parties agreed that no previous RTB hearings occurred between them, nor were any other notices to end tenancy issued by the landlords to the tenant. Both parties

agreed that the rent has not been raised by the landlords since the beginning of this tenancy, almost five years ago, in August 2015. Both parties agreed that the landlords provided the tenant with over four months' notice, more than double the required amount, in order to allow her to find a place to move.

The tenant did not allege or question bad faith on behalf of the landlords. The tenant stated that she believed that the rental unit would be used for the landlords' children to move in. The tenant's reason to dispute the 2 Month Notice was because she could not find a place and it was not safe for her to move during the covid-19 pandemic.

Based on a balance of probabilities and for the above reasons, I find that the landlords' son and daughter-in-law intend to move in to the rental unit in good faith to occupy it. I find that the landlords have met their onus of proof under section 49 of the *Act*.

I dismiss the tenants' application to cancel the 2 Month Notice, without leave to reapply. I uphold the landlords' 2 Month Notice, dated March 21, 2020.

Pursuant to section 55 of the *Act*, I grant an **order of possession to the landlords effective at 1:00 p.m. on July 31, 2020**, the effective date indicated on the 2 Month Notice. I find that the landlords' 2 Month Notice, dated March 21, 2020, complies with section 52 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlords effective at 1:00 p.m. on July 31, 2020**. The tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 29, 2020

Residential Tenancy Branch