



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2065 Triumph St. Dev. Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on April 17, 2020 and June 4, 2020. The Tenant 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 2-Month Notice).

Both sides 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. The Landlord confirmed receipt of the Tenant's Notice of Hearing and application package. The Landlord stated they received the Tenant's USB stick full of evidence on March 20, 2020, which the Tenant had mailed on March 18, 2020. The Landlords stated they were not able to open the files.

The Tenant provided a copy of an email chain, which shows that she reached out numerous times from March 24 – April 8, 2020, to confirm that the Landlord was able to open the files she sent, and it appears the question was largely avoided. The Tenant sent the first email on March 24, 2020, and it does not appear the Landlord responded to this email until April 8, 2020, where the Tenants request for confirmation of access was largely sidestepped. In any event, I find the Landlord's response was unclear and if they were unable to open the files, they should have more clearly articulated this.

I turn to the following Rule of Procedure:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

Having reviewed the totality of the above, I find the Tenant sufficiently served her evidence to the Landlord, via registered mail. The Landlord acknowledges receiving the USB stick, and I find the Tenant's confirmation of access was sufficient to enable this evidence to be admitted today.

The Tenant confirmed receipt of the Landlord's evidence and did not take issue with the service of this package.

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

- Is the Tenant entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on January 30, 2020. The Landlord issued the Notice for the following reasons:

1. *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).*
2. *The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

In the hearing, the Landlord, C.E., stated that he and another individual, A.C., own the company which owns and controls this 15-unit apartment building. The Landlord, C.E., stated that they want to take back this unit for A.C.'s daughter, who is starting university in the fall of 2020. The Landlord has selected this unit because it is the only unit in the building that is both vacant, and lower rent. The Landlord stated that they have slowly renovated and upgraded the units in the building over the last couple of years, and subsequently re-rented them for more. The Landlord stated that they want this unit for A.C.'s daughter because it is on an upper level of the building (more secure), and because it is one of a few units in the building which is unrenovated and rented for a lower cost. The Landlord stated that there are only a couple of other units in the building which are un-renovated, dated, and have lower monthly rent. The Landlord provided a copy of the tenancy agreement they have signed (on February 1, 2020) with A.C.'s daughter, for a tenancy start date of May 1, 2020. Rent under that agreement was set at \$800.00, which is almost the same as what they are charging the Tenant. The Landlord stated that A.C.'s daughter paid a \$400.00 security deposit on March 17, 2020, but she cannot move in until this Tenant moves out.

The Landlord stated that they purchased this building in January of 2018, and they initially planned on redeveloping the building, and potentially demolishing all or part of it. The Landlord stated that since that time, their plans have evolved, and they have decided to keep the building, and renovate the suites as they become available. The

Landlord stated that they have not always been aware of what their agent has said to the Tenant over the years, but acknowledged that their agent's relationship with the Tenant is somewhat contentious. The Landlord stated that they have just procured a new 10-year mortgage, and they have no plans to sell. The Landlord acknowledged that they have signed mutual agreements to end tenancy with many other tenants in the building, in order to renovate those units, but stated that they never forced anything with any of them. The Landlord indicated that they offered tenants in the building a payment, if they signed a mutual agreement to end tenancy, but if the Tenants didn't want to move or to sign a mutual agreement, that was fine, and nothing was forced on them. The Landlord indicated that there are other Tenants in the building who still rent at a lower rate, that did not sign the mutual agreement (with accompanying settlement offer), and who live in older unrenovated units.

The Tenant stated that she has lived in this rental unit since around 2004, and currently pays \$746.12 per month in rent. The Tenant provided documentation to demonstrate that the at least one of the Landlords has a history of court proceedings and questionable business tactics. The Tenant stated that she was aware that the Landlord was systematically approaching each Tenant in the building, and offering buyouts in exchange for possession of the unit. The Tenant stated that she refused all attempts, as she questioned their motives from the start.

The Tenant stated that the Landlord has tried to evict her 3 times, in different ways over the past couple years, since they took ownership. The Tenant stated that she has mostly dealt with the agent of the Landlord and sometimes the other owner, A.C. The Tenant pointed to the first attempt the Landlord made to end her tenancy and stated that in early 2018, the previous property manager who was employed by the previous owner, told her that the building was going to get demolished, and that it was inevitable that the tenancy would end. The Tenant stated she checked with the City and no demolition permits were issued, and this raised some red flags for her. The Tenant stated this was all verbal and she did not accept what was happening after finding out that the Landlord may not be acting in good faith.

The Tenant stated that she was also approached a second time in April of 2018, when she was phoned by the Landlord, or agent of, and was verbally offered a buyout option. The Tenant stated that she again refused the offer, as she wanted to maintain her residence in the building. The Tenant stated that at that point there were 3 units in the building that hadn't accepted the buyout offer.

The Tenant stated that the third attempt the Landlord made to evict her was when she was issued this Notice, on January 30, 2020. The Tenant pointed to various communications and emails she had with the other owner, and the property manager.

The Landlord stated that they offered each tenant in the building with an opportunity for compensation if they agreed to move out, but no one was forced to sign, and it was okay if they stayed living there.

The Tenant also pointed to threats from the Landlord's agent, in September of 2019 (email provided), where she was told she could be evicted if she continued "marching the corridors" and speaking to other Tenants about the issues she was dealing with. The Landlord's agent also stated in that email that the Landlord may file an application to raise the Tenant's rent, since she was paying so little, compared to market rates. The Tenant pointed out that this type of rent increase is not allowable under the Act, since geographic rent increases are not permissible anymore. The Tenant stated that getting these threats from the Landlord's agent, only months before she got this Notice, is suspicious and makes her believe the Landlord/agent has an ulterior motive, because of the hostility that has developed.

The Tenant also pointed to an email which she sent to both of the Landlords (owners), their agent, and another individual, which states that she is going to be filing an application against the Landlord for all of the issues she has endured over the past couple of years. This email was sent by the Tenant on December 18, 2019. The Tenant pointed out that this was only 42 days before she received this Notice, and feels the Landlord is ending the tenancy because of their contentious relationship, not for genuine reasons.

The Tenant stated that at the time she got the Notice, there was another unit available in the building, for a higher rent. The Landlord stated that they selected this unit because it is higher up in the building (more secure), and because it is unrenovated, and lower rent. The Tenant feels that since the Landlord owns the building, they could easily adjust the rent of other units to meet their daughters' financial needs, if that was a legitimate concern. The Tenant stated that on May 8, 2020, the Landlord listed 3 units for rent in the building, all at higher rents.

The Landlord acknowledged that he is not able to apply for the rent increase that his property manager indicated, and threatened, and stated that she misspoke and didn't know what the current laws are.

The Tenant feels there is lots of evidence to show that the Landlords are tired of dealing with her, and simply want her out, rather than for the reason listed on the Notice. At the end of the hearing, the Landlord offered the Tenant 12 month's compensation in attempt to settle this matter, but the Tenant refused, as she wanted to stay living in the unit.

Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that the owner's (A.C.) daughter intends in good faith to occupy the unit (as indicated on the 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord (agents of) and the Tenant. The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured.

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

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.

I have considered the testimony and the evidence on this matter, in totality, and I note that the Tenant has a somewhat acrimonious and contentious relationship with the Landlords and/or their agent. It appears both parties have threatened legal action against the other at one point or another, as recently as September and December 2019. I note the Landlord has had more than one conversation with the Tenant, leading up to this Notice, where they attempted to offer the Tenant money, in exchange for

vacant possession of the unit. The Landlord has offered the Tenant up to 12 month's rent in compensation, if she vacated the unit.

Although the Landlord stated in the latest hearing, that there are currently no other vacancies in the building, he does not dispute that there have been a few over the last few months. I accept that they were at a higher rent, as they were renovated units. However, I also note the Landlords, as owners of the building, have the ability to set rent, for renovated and unrenovated units. It is not clear why the Landlords would be willing to pay the Tenant 12 months compensation to move one of their daughters into the unit, but they would not consider reducing rent in one of the more expensive vacant units, if in fact their daughter can only pay \$800.00 per month. However, this factor alone is not determinative in my consideration of whether or not they are acting in good faith.

I have also considered that at least one of the Landlords/owners as well their agent does not have a good relationship with the Tenant. The emails provided into evidence show that the relationship between the parties has continued to degrade from 2018, up until December 2019. I note the contentious email exchanges in the fall clearly indicate a tense and hostile relationship. I note this hostility appears to have escalated into late 2019, shortly before this Notice was issued. I find the nature of the relationship between the parties, and the history of unsuccessful negotiations over buyouts, leads me to question the good faith intentions of the Landlords.

Given the context and the history, I do not find the Landlord has sufficiently demonstrated their good faith intentions, and that they do not have an ulterior motive (to end the tenancy because of the hostile relationship rather than because of the stated purpose). I do not find the tenancy agreement the owner has signed with his daughter sufficiently demonstrates their good faith intentions, especially given the tumultuous relationship and the potential for a desire to end the tenancy because of the poor relations.

Therefore, the Tenant's application is successful and the Notice received by the Tenant on January 30, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

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

Conclusion

The Tenant's 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: June 4, 2020

Residential Tenancy Branch