



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 11, 2020 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated June 27, 2020 (the “Notice”). The Tenants also sought reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. The Tenants called Witness G.O. and B.B. during the hearing. I explained the hearing process to the parties. The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 01, 2012 and was for a fixed term ending June 30, 2013. The tenancy then became a month-to-month tenancy. Rent was \$1,000.00 per month due on the first day of each month. From the materials, it is my understanding rent is currently \$1,125.00 per month.

The Notice was submitted as evidence. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Notice indicates the child of the Landlord or Landlord's spouse will occupy the rental unit.

The Landlord testified that the Notice was taped to the door of the rental unit June 27, 2020. The Tenants testified that they received the Notice July 06, 2020 as they were away. The Tenants did not dispute that the Notice was taped to the door June 27, 2020.

In relation to the grounds for the Notice, the Landlord testified as follows. Her son L.G. is moving into the rental unit September 01, 2020. L.G. has been abroad for eight months and is coming home. L.G. needs a place to live. She would have issued the Notice March 28, 2020 but was not allowed given the pandemic.

The Landlord disagreed with the Tenants' written submissions and outline of incidents between tenants in the building and the Landlord. She agreed the May 02, 2020 incident with Tenant C.T. occurred but disagreed with Tenant C.T.'s outline of it. The Landlord testified that the Tenants had a letter written which included other tenants who did not give their consent to be included and she told Tenant C.T. the Tenants had no right to do that. The Landlord said the Tenants used a fraudulent letter.

The Landlord confirmed she owns the rental unit building which has 12 units in it. The Landlord confirmed both of her sons have lived in the building previously. The Landlord testified that L.G. moved out of the building a year ago and went travelling. The Landlord agreed two other units in the building became available and were rented out in April and June. She testified that her son did not get home until July 03, 2020. The Landlord agreed she attempted to evict Witness G.O. and was unsuccessful in doing so.

The only documentary evidence the Landlord submitted were photos of service of the Notice and a written statement stating:

We have given notice to [rental unit] on June 27, 2020 at 12:02pm for Landlords use to move our son in. Notice was given on #RTB-32 form.

We had originally planned to give notice to [rental unit] on March 28, 2020 but due to the Covid 19 pandemic eviction restrictions it was not possible.

The Tenants provided detailed written submissions outlining their position. The Tenants' position is that the Landlord had two ulterior motives for issuing the Notice. First, the Tenants' rent is low. Second, the relationship between the Tenants and Landlord has deteriorated since April.

The Tenants' written submissions outline a timeline of events and incidents that occurred between tenants in the building and the Landlord and her husband. It is my understanding from the outline and submissions of the Tenants at the hearing that the outline is meant to show that the relationship between the Tenants and Landlord has deteriorated, the reason for this, that other tenants in the building have had issues with the Landlord and that the Landlord retaliates when tenants upset her or assert their rights.

One of the incidents outlined is an incident that occurred between Tenant C.T. and the Landlord May 02, 2020. The two had an encounter and discussion about a letter sent from tenants in the building to the Landlord. In her written statement, Tenant C.T. states that the Landlord used an aggressive tone, yelled at her, swore at her and accused her of stirring things up and forging the consent of other tenants on the letter. Tenant C.T. took notes within a week of this incident and submitted them. The Tenants submitted an email from Witness G.O. dated May 02, 2020 to Tenant C.T. outlining what he observed in relation to this incident. His observations accord with Tenant C.T.'s outline of the incident. Witness G.O. confirmed at the hearing that he wrote this email and it is accurate.

The Tenants submitted a statement from Witness B.B. who confirmed at the hearing that he wrote this statement and it is accurate. The Tenants submitted a signed witness statement from A.S. Both statements tend to support the Tenants' position about incidents that have occurred in the building between tenants and the Landlord. Both statements tend to support the position that relationships between tenants and the Landlord become tense when tenants upset the Landlord or assert their rights.

The Tenants submitted that there are 12 units in the building, six one-bedroom units and six two-bedroom units.

Tenant S.P. testified as follows. The Landlord's two sons have resided in the building in one-bedroom and two-bedroom units in the past. The evidence shows two units have been vacated and re-occupied since March. One of these was a one-bedroom unit. Since April, the Landlord has threatened, intimidated and made inaccurate statements about the Tenants.

Tenant S.P. pointed out that, until the hearing, the Tenants did not know which of the Landlord's sons was moving into the rental unit. Tenant S.P. submitted that the Tenants have not had a chance to fully review the veracity of this claim given it is the first time they are hearing it. Tenant S.P. pointed out that the Landlord has not submitted any documentary evidence to support her position.

The Landlord did not dispute A.S.'s letter or what is stated in it. The Landlord did not ask Witness G.O. or B.B. any questions despite being given the opportunity to do so.

In reply, the Landlord testified that the Tenants do not pay the lowest rent in the building. She testified that she was going to issue the Notice March 28, 2020 because her son was due back May 05, 2020. The Landlord testified that she did not use the other two units that became available since March for her son because they are two-bedroom units. The Landlord testified that only the rental unit and Witness G.O.'s unit are one-bedroom units.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act*. The Tenants had 15 days from receipt of the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I am satisfied the Notice was posted to the door of the rental unit June 27, 2020 as the parties agreed on this. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice June 30, 2020. I do not find that the Tenants have rebutted this presumption given the lack of documentary evidence showing they were away and did not receive the Notice until July 06, 2020. However, this is irrelevant as the Tenants had until July 15, 2020 to dispute the Notice and filed the Application July 11, 2020, within time.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities.

Section 49(3) of the *Act* states:

(3) A landlord who is an individual 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.

Policy Guideline 2A deals with ending a tenancy for landlord's use and states in part:

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...

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

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 am not satisfied based on the evidence provided by the Landlord that the Landlord intends in good faith to have her son L.G. occupy the rental unit for the following reasons.

The Landlord has the onus to prove the grounds for the Notice. The Tenants have no onus to prove an ulterior motive or to prove the Landlord does not have grounds for the Notice.

The Landlord testified that her son L.G. intends to move into the rental unit. The Landlord provided no evidence to support her verbal testimony. The Landlord's verbal testimony alone is not sufficient to prove the grounds for the Notice. In the circumstances alleged, I would expect at least a signed witness statement from L.G. about his intention to move into the rental unit. More likely, I would expect the Landlord to have called L.G. as a witness at the hearing to provide affirmed testimony about his

intention. These two things are the minimum I would expect given the Tenants disputed the Notice. The Landlord did not submit any such evidence and in fact submitted no evidence whatsoever to support her verbal testimony. In the absence of evidence to support her verbal testimony, the Landlord has failed to prove the grounds for the Notice.

I would have cancelled the Notice on the above basis alone. However, I also note the following.

I note that the Landlord did not provide any details about the basis for the Notice on the Notice such that the Tenants could take steps to verify whether L.G. was moving into the rental unit. The Landlord did not state which son was moving into the rental unit or provide any details about this in her response to this dispute such that the Tenants could take steps to verify whether L.G. was moving into the rental unit. The Tenants stated that the hearing was the first time they were learning that L.G. was moving into the rental unit and why. I accept this as the Landlord did not dispute this and has submitted no documentary evidence showing otherwise.

The Tenants submit that the Landlord has an ulterior motive for issuing the Notice. The Tenants submitted some evidence to support their position such as the witness statements from Witness C.O., Witness B.B. and A.S.

There is no issue that two units in the same building became available and were re-rented for April and June. The Landlord did not dispute this. The Landlord testified that she was going to issue the Notice March 28, 2020. Based on this, I would expect the Landlord to have had the alleged plan to move her son into the rental unit as of March 28, 2020. This raises the question of why the Landlord's son did not move into the unit that was re-rented for June. The Landlord's response to this was that the unit was a two-bedroom unit. However, as stated, the Landlord did not submit documentary evidence to support her verbal testimony on this point or to support that a two-bedroom unit was not suitable for L.G.

The Tenants have submitted sufficient evidence to call into question the motive of the Landlord in issuing the Notice. As stated, and more importantly, the Landlord has not submitted sufficient evidence to support her verbal testimony about her son moving into the rental unit.

Given the above, I am not satisfied the Landlord intends in good faith to have her son L.G. occupy the rental unit. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in the Application, I award the Tenants reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from one future rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The Tenants can deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 06, 2020

Residential Tenancy Branch