



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 Tenant on July 14, 2020 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated June 30, 2020 (the “Notice”). The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing with Z.H. as a witness. The Landlord appeared at the hearing with the Property Manager as well as T.L. and A.T. as witnesses. The witnesses were not involved in the hearing until required.

I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package. The Landlord had not received the Tenant’s evidence; however, there was no issue with this raised given the nature of the evidence submitted. The Tenant confirmed receipt of the Landlord’s evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties and witnesses. 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 May 01, 2013 and was for a fixed term ending April 30, 2014. The tenancy then became a month-to-month tenancy. Rent was \$1,800.00 per month due on the first day of each month at the outset. The parties agreed rent has been \$2,187.00 per month since May 01, 2020.

The Notice was submitted as evidence. It is addressed to the Tenant and a co-tenant. It relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of September 30, 2020. The reason for the Notice is that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Notice states that the child of the Landlord or Landlord's spouse will occupy the rental unit.

The Tenant took issue with the form and content of the Notice on the basis that she did not know the real reason for the Notice until an explanation was sent July 30, 2020 and because the Notice includes a Schedule of Parties naming the co-landlord.

The Property Manager testified that the Notice was sent to the Tenant by registered mail and posted to the door of the rental unit June 30, 2020. The Tenant confirmed receipt of the Notice July 01, 2020 posted to the door of the rental unit.

The Landlord testified as follows in relation to the grounds for the Notice. She wants to take back the rental unit for her daughter to move into. Her daughter expressed to her that she wants to move back to her childhood home. Her daughter lived in the home for 14 years. Her daughter wants to use the rental unit as her home office. Her daughter wants to move closer to her.

Witness A.T. testified as follows. She would like to move back into her childhood home. She started a home business and wants to use part of the rental unit for this. She would like to live closer to her parents.

Witness A.T. testified as follows in response to questions from the Tenant. Her work is equipment heavy so requires more than a small space. She does not have clients attend her place of work. She does not see why she does not need five bedrooms. Her initial plan is to live upstairs and have her work downstairs. She intends to live in the home by herself.

The Landlord did not call T.L. as a witness.

The Tenant provided the following testimony and submissions. She truly believes the Landlord wants to evict her in order to raise the rent. The rent amount she pays is low for the area. The Landlord can only raise the rent in accordance with the RTB guidelines each year. The rent has been increased every year in January. The rental unit has an upper and lower suite. The tenancy agreement covers both suites. The Landlord tried to sell the rental unit in March. The rental unit was on the market for two months and then removed. The Landlord's daughter sold her house. She does not believe the house will be used for the stated purpose.

Witness Z.H. testified as follows. He has lived in the rental unit for almost two years. The Tenant's rent was increased. Shortly after this, the rental unit was listed for sale. The realtor attended the rental unit and commented that the landlords could get a lot more rent than they were currently getting which was a red flag. The house was taken off the market mid-May. The rental unit is a five bedroom house with two suites and could be rented for more money. The Landlord mentioned selling another property and financial issues. The Landlord just wants to raise the rent. The Landlord is not acting in good faith. One person is not going to move into a five bedroom house.

The Tenant submitted the following documentary evidence. The sales listing for the rental unit. A Notice of Rent Increase.

The Landlord submitted the following documentary evidence. An email from a real estate agent stating that they listed the rental unit and another property for sale for the Landlord in March. It states that the other property sold May 01, 2020 and the rental unit was removed from the market May 14, 2020. A letter from the Landlord stating that she put the rental unit and another property on the market in March to address some financial concerns. It states that the other property was sold, and the rental unit was removed from the market May 14, 2020.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act*.

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I am satisfied the Tenant received the Notice July 01, 2020 posted to the door of the rental unit as this accords with the testimony of both parties. I find the Notice was served in accordance with section 88(g) of the *Act*. The Application was filed July 14, 2020, within the 15-day time limit.

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.

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 meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2A deals with the good faith requirement in section 49(3) of the *Act* and states at pages one and two:

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 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...

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

Policy Guideline 2A reiterates that the person moving into the rental unit must intend to use it for a residential purpose as living accommodation or part of their living space (page 2).

I am satisfied based on the testimony of the Landlord and A.T. that A.T. intends in good faith to move into the rental unit and use it as living accommodation as well as her home office. There was nothing about the testimony of the Landlord or A.T. that caused me to question the reliability or credibility of their testimony.

I did not find the Tenant to raise compelling arguments that overcome the testimony of the Landlord and A.T.

I am not satisfied the Landlord issued the Notice to raise the rent. Evidence of annual rent increases is not enough to call into question the good faith of the Landlord as the Landlord was entitled to raise the rent annually. I note that there is no evidence before me showing the Landlord attempted to raise the rent beyond what is permitted by the *Act* but was unsuccessful in doing so.

It is not sufficient to submit that rent for the rental unit is low for the area. This would apply to many rental units occupied by long-term tenants. It is not enough to call into question good faith in this matter.

I am not satisfied the evidence relating to the rental unit being listed for sale and then removed from the market is sufficient to overcome the testimony of the Landlord and A.T. The Landlord did not dispute that the rental unit was listed for sale then removed from the market. The Landlord provided a reasonable explanation for this and submitted some documentary evidence to support that explanation. I also note that this is not a situation where there is evidence before me showing the Landlord had difficulty selling the rental unit because it was tenanted, which may have been sufficient to call into question the good faith of the Landlord.

I am not satisfied based on the testimony of Z.H. that the realtor attended the rental unit and commented that the Landlord could get a lot more rent than they were currently getting. The Tenant did not call the realtor as a witness to confirm this. There is no documentary evidence before me confirming this. In the absence of further evidence, I am not satisfied this occurred. Further, even if it did occur, I am not satisfied that such

comments of the realtor are compelling enough to call into question the good faith of the Landlord.

I acknowledge that the rental unit is a five bedroom house and that only A.T. intends to move into the rental unit. However, I am satisfied based on the testimony of the Landlord and A.T. that A.T. lived in the rental unit for 14 years, that A.T. will be closer to her parents living in the rental unit and that A.T. intends to use part of the rental unit for her home business. In these circumstances, I am satisfied the Landlord and A.T. have provided a sufficient reason for A.T. wanting to move into the rental unit despite the size of it.

When I consider the testimony and documentary evidence before me, I am satisfied that it is more likely than not that A.T. intends in good faith to occupy the rental unit. I acknowledge that the Landlord has the onus to prove the Notice and the Tenant does not have any onus to disprove the Notice. I find the Landlord has met the onus to prove the Notice through her testimony, the testimony of A.T. and the documentary evidence. The arguments and evidence of the Tenant do not change my finding that the Landlord has proven the Notice.

I acknowledge that A.T. intends to use part of the rental unit for her work. Based on the testimony of A.T., I understand the situation to be the equivalent of someone working from home and using part of their home as their office. I find this is captured by the meaning of “occupy” for a residential purpose given A.T. intends to live in the rental unit.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*. I do not find the issues raised by the Tenant to change this. The Notice does state the reason for it. I do not find that the Landlord was required to provide further information than that provided on the Notice. The Schedule of Parties names the co-landlord and does not change that the Notice complies with section 52 of the *Act*.

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

I uphold the Notice and dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* requires me to issue the Landlord an Order of Possession given I have upheld the Notice, dismissed the dispute of the Notice and found the Notice complies with section 52 of the *Act*. I issue the Landlord an Order of Possession effective at 1:00 p.m. on September 30, 2020.

I note the compensation requirements under section 51 of the *Act*. I also note that the Tenant would be entitled to apply for the equivalent of 12 times the monthly rent payable under the tenancy agreement if the Landlord does not follow through with the stated purpose of the Notice.

I decline to award the Tenant reimbursement for the filing fee given the Tenant was not successful in the Application.

Conclusion

The Notice is upheld. The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2020. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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 24, 2020

Residential Tenancy Branch