



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued by the landlord; and
- recovery of the filing fee.

The listed tenant, the tenant's advocate, the landlord and the landlord's advocate attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, make submissions, and cross-examine the other parties.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice and to recover the filing fee paid for their application?

Background and Evidence

The evidence showed that the tenancy between these tenants and the original landlord began in 2012. A written tenancy agreement was submitted by the tenant showing a subsequent tenancy agreement between the tenants and the original landlord, with a start date of September 1, 2016, monthly rent of \$800, and a security deposit of \$350 and pet damage deposit of \$450 being paid to the landlord.

The current landlord/respondent took ownership of the residential property in September 2017. The residential property includes a detached garage, with a 340 square foot, studio-type living area above, where the landlord currently lives.

The one-bedroom rental unit here is the lower level of the main house, with a two bedroom rental unit on the upper level. The upper level is rented to other tenants of the landlord.

The evidence is that the Notice here, dated July 14, 2020, with a listed move-out date of September 30, 2020, was served upon the tenants via registered mail. The reason indicated on the Notice is that the rental unit will be occupied by the landlord or the landlord's spouse. Between the tenants and the landlord, a full copy of the Notice was filed into evidence.

The tenants confirmed that they received the Notice on July 17, 2020, and it is noted that their application in dispute of the Notice was filed on July 25, within the 15 days after service allowed by the Act to dispute the Notice.

The evidence also showed that the parties have been in a prior dispute resolution proceeding on an earlier Two Month Notice served on the tenants by the landlord, listing the same reason for ending the tenancy. The earlier Notice was received by the tenants on November 23, 2017, they filed an application to dispute the Notice and a hearing was held on their application on February 13, 2018, before another arbitrator.

In a Decision of March 15, 2018, the other arbitrator cancelled the earlier Notice, as they determined that the Notice was not issued in good faith.

From the evidence, it appeared that the tenants were again challenging the good faith of the landlord in issuing the current Notice.

While normally a landlord would proceed first in a hearing when a tenant files to dispute a Notice, I elected to hear from the tenant and their legal advocate first to explain why they are challenging the good faith of the landlord in this case.

The tenant's legal advocate's submissions –

The advocate said that the landlord has once again not had a good faith intent in issuing the current Notice as he has a pattern of attempting to evict the tenants since 2017. The advocate submitted that after the last Decision, he continued to ask the tenants when they would move out.

The advocate submitted that the landlord had the upstairs tenants to make excessive noise and did not repair the refrigerator in a timely manner.

Tenant's testimony –

The tenant said that the landlord expressed his disdain with the Decision from the last dispute resolution hearing. The tenant said that the landlord's original intent was to demolish the rental units, but he had failed to do so.

The tenants submitted that the landlord is acting in bad faith as he currently occupies a detached suite and garage from which a previous tenant was evicted so that he may occupy that suite. The tenants submitted that the landlord previously was found to have acted in bad faith.

Landlord's advocate's submissions –

The advocate said that it was always the landlord's intention to move into the basement suite, which was the reason the landlord gave notice to vacate to his own landlord for the apartment he was living in at the time. The advocate said the landlord wants space for his family to visit and there is not enough space in the studio suite. The advocate said there is no incentive for the landlord not to comply with the reason listed on the Notice and that he has advised the landlord of the financial penalty if he fails to use the rental unit for the stated purpose. Filed into evidence was a copy of the notice to vacate.

Landlord's testimony –

The landlord acknowledged that he was frustrated when he read the prior Decision, due to the outcome. The landlord said that his original intent when buying the property was to demolish the main home, but the costs of construction were too expensive.

The landlord submitted he does not have much extended family in Canada and wants to stay close to his children and grandchildren. The landlord said that his family dynamics have changed since the last Notice was issued. The landlord said he has given up his apartment in the other area and moved full time to the local area.

The landlord said his daughter has children, who are getting older and bigger, and his son now has a partner and his own business. The landlord submitted that his son would like the opportunity to accept jobs in the area, but his current studio space is too small for his son to stay with him long term.

The landlord said his granddaughter suffers from PTSD due to an incident in another country and cannot stay in small spaces. As a result, his granddaughter has refused to stay in his home for any length of time.

The landlord said that his children and grandchildren cannot visit at the same time, due to space restrictions, and that all of his family enjoy the outdoor activities that are available in the area.

The landlord said that he is getting older and wants his children and grandchildren to come to visit as often as they can, but they are unable to currently.

The landlord submitted it is his intention to move into the one bedroom rental unit and let his children and grandchildren use the studio space when they visit.

The landlord said that he cannot evict the upstairs tenants as their rental unit is bigger, they pay more in rent, and they have a long, fixed term tenancy. The landlord said the upper tenants' monthly rent pays the mortgage.

Landlord's son's testimony –

The landlord's son said that he has a partner now and his own business and would like to seek contracts in the area. The son said he enjoys a lot of outdoor activities and has to now sleep in the garage or on the kitchen floor when he visits. The son reiterated

that he and his sister cannot visit their father at the same time, due to the expanding family.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that 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.

When a tenant disputes a 2 Month Notice to end tenancy, the landlord has the burden to prove that not only does he intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Residential Tenancy Policy Guideline 2 provides 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 their obligations under the Act.

Upon review of the 2 Month Notice to End Tenancy issued July 14, 2020, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 89 of the Act.

In this case, the Notice here was issued over two and a half years after the first Notice for the same reason, which was ultimately cancelled by another arbitrator. While I am not bound by past decisions, I did consider if the matter was *res judicata*, in other words, has this same issue been previously decided upon so that I am bound by the Decision.

In this case, the tenants raised issues that were dealt with in the prior Decision of another arbitrator, such as a rent increase not complying with the Act as to the allowed amount. I therefore find that issue was not relevant to the issues in this Decision.

I looked more to whether there has been a change in circumstances in the nearly three years since the last Notice was issued, and determined that there has been. The landlord has now permanently re-located to the local area, having given up possession of his rental unit in another location, as shown by the Notice to Vacate effective January

24, 2020. Additionally, the landlord's family is growing, with the addition of the son's partner, and his grandchildren who are growing and getting older, requiring more space.

I then proceeded to consider the merits of this Notice.

After hearing from the landlord, I find that he genuinely intends to move into the rental unit, in order to have more space for his visiting adult children and grandchildren, who will be able to use the 340 square foot studio space. The rental unit is in an area widely known for year-round outdoor recreational activities, and I find it reasonable that the landlord's children and grandchildren would be able to visit more frequently to engage in those activities and at the same time if they had this space available to them.

I cannot find that the landlord acted dishonestly or had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I therefore find that, upon a balance of probabilities, the landlord has met his burden of proving that he honestly intends to move into the rental unit and that the Notice was issued in good faith.

I find the Notice is valid and enforceable.

As such, I dismiss the tenants' application seeking cancellation of the Notice and recovery of the filing fee, without leave to reapply.

I find that the landlord is entitled to and I grant an order of possession for the rental unit effective on the move-out date on the Notice, or September 30, 2020, pursuant to section 55(1)(b) of the Act.

The order of possession for the rental unit is included with the landlord's Decision and must be served on the tenants to be enforceable. Should the tenants fail to vacate the rental unit by 1:00 p.m., September 30, 2020, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenants.

Conclusion

The tenants' application is dismissed as I have found the Notice to be valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective at 1:00 p.m. on September 30, 2020.

This decision is final, legally binding and 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: August 31, 2020

Residential Tenancy Branch