



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT; CNL

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 5, 2020 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for her application, pursuant to section 72.

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 5, 2020 ("2 Month Notice"), pursuant to section 49.

The landlord, the landlord's agent, and the two tenants 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 70 minutes.

The landlord confirmed that she is the owner of the rental property house and her agent had permission to represent her, as she is her partner assisting in tenancy matters.

The hearing began at 11:00 a.m. with all parties present. The upstairs tenant accidentally disconnected from the hearing at 11:43 a.m. and called back in immediately. I informed her about what occurred in her absence. The hearing ended at 12:10 p.m.

In accordance with Rule 2.10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*, both of the tenants’ applications were joined to be heard together, prior to this hearing. Both of the tenants’ applications involve the same rental property, the same landlord, similar remedies sought, and similar facts and findings. Therefore, this one decision is regarding both rental units and both tenants and their tenancies with the landlord.

The landlord confirmed receipt of the tenants’ two applications for dispute resolution hearing packages and amendments. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ two applications and amendments.

The landlord confirmed that she did not submit any documentary evidence for this hearing.

The two tenants confirmed receipt of the landlord’s two 2 Month Notices on August 7, 2020, by way of registered mail. The landlord’s agent confirmed that both notices were served to the two tenants on August 5, 2020, both by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord’s two 2 Month Notices on August 7, 2020.

At the outset of the hearing, the landlord confirmed that both of her previous 2 Month Notices, dated July 10, 2020, issued to both tenants, were cancelled because they had errors on them. Accordingly, these notices are cancelled and of no force or effect.

Issues to be Decided

Should the landlord’s two 2 Month Notices be cancelled? If not, is the landlord entitled to two orders of possession for landlord’s use of property?

Is the basement tenant entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of all parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both of the tenants’ claims and my findings are set out below.

Basement Tenant

The landlord and the basement tenant agreed to the following facts. That tenancy began on February 9, 2019 and is currently on a month-to-month basis. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$400.00 were paid by the basement tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by the parties. The basement tenant continues to reside in the rental unit. The rental unit has two bedrooms, one bathroom, and is 800 to 1,000 square feet. It is the basement suite of the landlord's house, where the upstairs tenant resides on the upper floor.

A copy of the landlord's 2 Month Notice for the basement tenant was not provided for this hearing. Both parties agreed that the date on that notice is August 5, 2020 and the effective move-out date is November 8, 2020. Both parties agreed that the following reason was provided by the landlord to end that 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 landlord's spouse.*

The basement tenant seeks to cancel the landlord's 2 Month Notice. The landlord seeks an order of possession based on that 2 Month Notice. The landlord stated that she issued the 2 Month Notice to the basement tenant because she wants her daughter to move into the basement rental unit.

The landlord's agent stated the following facts. The rental property is the only residence that the landlord owns in Canada. The landlord's daughter is attending university in Victoria, so the landlord agreed to rent her house to the two tenants in Vancouver. The landlord, her husband and her daughter moved to Victoria and continue to live there now, since their daughter is in a two-to-three-year university program. The landlord rented the basement suite out first to the basement tenant. The landlord put her house on the market to sell but because of the covid-19 pandemic, the market was bad. The landlord's daughter is in her second year of university now and is required to complete a work internship; there are not a lot of internship opportunities in Victoria, as compared to Vancouver. The landlord's daughter has not yet found an internship in Vancouver yet. The landlord wants her daughter to move into the basement at the rental property, so

that she can have privacy, since she works at night and needs space to complete her architecture work. The landlord's father had a medical emergency in China, so the landlord's husband is currently in China, caring for the landlord's father.

The landlord stated the following facts. The landlord is currently renting a two-bedroom and one-bathroom apartment of approximately 1,100 square feet in Victoria. Both the landlord and her daughter currently live there but they have conflicts because their work schedules are different. The landlord likes to wake up early and go to sleep early; the landlord's daughter likes to work late and sleep late. The landlord wants to occupy the upper unit of the rental property, while her daughter will occupy the basement suite for privacy and to avoid conflict in their relationship.

The basement tenant stated the following facts. She is confused because the landlord did not sign her written tenancy agreement, only the landlord's agent did. She has only been dealing with the landlord's agent, not the landlord owner. The basement suite is a two-bedroom unit that is not heated and is not comfortable to live in. She inquired as to why the landlord needs two separate suites for her three-member family to live in.

Upstairs Tenant

The landlord and the upstairs tenant agreed to the following facts. That tenancy began on November 1, 2019 and is currently on a month-to-month basis. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid by the upstairs tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by the parties. The upstairs tenant continues to reside in the rental unit. The rental unit has four bedrooms, 1.5 bathrooms, and is 1,300 square feet. It is the upper floor of the landlord's house, where the basement tenant lives on the lower floor.

A copy of the landlord's 2 Month Notice for the upstairs tenant was provided for this hearing. Both parties agreed that the date on that notice is August 5, 2020 and the effective move-out date is October 31, 2020. Both parties agreed that the following reason was provided by the landlord to end 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 landlord or the landlord's spouse.*

The upstairs tenant seeks to cancel the landlord's 2 Month Notice. The landlord seeks an order of possession based on the 2 Month Notice. The landlord stated that she issued the 2 Month Notice to the upstairs tenant because she and her husband want to move into the upper rental unit.

The landlord's agent stated the following facts. The landlord wants to move back and settle in Vancouver and it is her only residence. The landlord and her husband intend to move into the upper rental unit. The landlord's husband might bring back the landlord's father from China and have him live with them in the upper rental unit, but it is not confirmed yet, so it was not included in the 2 Month Notice to the upstairs tenant. Everything depends on the landlord's father's medical condition.

The landlord stated the following facts. She does not want to rent her house out anymore. She cannot rent it out separately from the upstairs and the basement. It is a single-family house. She wants her own "life quality" and does not want any tenants living in the rental unit. If the upstairs tenant leaves, the rental unit will be more "neat, clean and quiet."

The upstairs tenant stated the following facts. The landlord did not issue the 2 Month Notice in good faith. She had a previous RTB hearing with the landlord on July 7, 2020, where the landlord tried to evict her for causing serious damage to the rental unit, but her application was dismissed. After that failed, the landlord gave her two 2 Month Notices, the first with the error on it. The landlord is trying to do whatever she can to evict her. There is no way to join the upper and basement units, as they are completely separate with no stairs joining them. The landlord's daughter will probably only be in Vancouver temporarily, since she will probably have to go back to class in person in Victoria, as online classes are only for the time being.

The landlord's agent testified regarding the following facts. The landlord attended a previous hearing with the upstairs tenant on July 7, 2020, because the landlord received a complaint from the next-door tenant neighbour, who called the police. The police told him to move out. The landlord had to apply for the hearing for safety issues because the neighbouring tenant felt unsafe. The landlord did not win the hearing because she was told she could not just base it on a police file number. The landlord also could not get into the upstairs tenant's rental unit in order to fix the internet.

Analysis

Subsection 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 intend, in good faith, to occupy the rental unit.

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants received the notice. The tenants received the two 2 Month Notices on August 7, 2020 and amended their application to dispute them on August 10, 2020. The tenants' applications are both within the 15-day time limit under the *Act*. Therefore, the onus shifts to the landlord to justify the basis of the two 2 Month Notices.

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

...

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 find that the landlord provided insufficient evidence and has ulterior motives for issuing the two 2 Month Notices and they were not issued in good faith.

I find that the landlord failed to provide documentary evidence that her daughter intends to move into the basement rental unit, that she needs to find an internship for school, or that she has been applying for or looking at internship opportunities in Vancouver. The landlord's daughter did not appear at this hearing to testify regarding her intentions, nor

did she provide a written statement of same. According to the landlord, her daughter attends university in Victoria, not Vancouver, and she has not indicated if or when she is required to attend in person at the Victoria university to finish her school program.

I find that the landlord has recently tried to evict the upstairs tenant and the landlord's application to end that tenancy early, was dismissed. That previous RTB hearing occurred on July 7, 2020, less than two months prior to this hearing on August 31, 2020. The upstairs tenant provided a copy of that decision. The landlord raised previous conflictual issues regarding safety, cleanliness and quiet, regarding the upstairs tenant in her testimony during this hearing.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met her burden of proof to show that she or a close family member intends to move into the rental unit, including the basement and upper suites, in good faith.

Accordingly, I allow both of the tenants' applications to cancel the landlord's two 2 Month Notices. The landlord's two 2 Month Notices, both dated August 5, 2020, are cancelled and of no force or effect. Both tenancies continue until they are ended in accordance with the *Act*. The landlord is not entitled to orders of possession for landlord's use of property.

As the basement tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee for her application.

Conclusion

The tenants' two applications to cancel the landlord's two 2 Month Notices are allowed. The landlord's two 2 Month Notices, dated August 5, 2020, are both cancelled and of no force or effect. Both tenancies continue until they are ended in accordance with the *Act*. The landlord is not entitled to orders of possession for landlord's use of property.

I order the basement tenant to deduct a one-time amount of \$100.00 from her future rent payable to the landlord for her rental unit and her tenancy, in full satisfaction of the monetary award for the filing fee.

The landlord's two 2 Month Notices, dated July 10, 2020, issued to both tenants, are cancelled and of no force or effect.

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: August 31, 2020

Residential Tenancy Branch