



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-RM, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on July 27, 2020, wherein the Tenant sought to cancel a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit, issued on July 7, 2020 (the "Notice") as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 9:30 a.m. on September 1, 2020. Both the Tenant and the Landlord, L.H. called into the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Preliminary Matter

The Landlord, L.H., confirmed that she is also known as A.H. who was separately named on the Tenant's Application. She also confirmed that R.P. was no longer an owner of the property. Finally she noted that K.T. was the Property Manager and not a Landlord.

A review of the Notice confirms that only L.H. was noted as Landlord. I therefore Amend the Tenant's Application to remove R.P. and K.T. as Landlords and to confirm that L.H. is also known as A.H.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

This tenancy began April 1, 2006. The Tenant pays a total of \$645.00 per month for rent and utilities.

L.H. purchased the property in 2009 at which time the tenancy was pre-existing. The Landlord testified that the rental unit is in a building which has four rental units. She further stated that there is a couple who live on one side and rent two units for a total of \$1,046.00 for both units. The other rental unit pays \$662.54. The Landlord confirmed that all the people lived there since before she bought the property.

The Landlord issued the Notice on July 7, 2020. The reasons cited on the Notice were that the rental unit would be converted to a caretaker suite.

The Landlord stated that the building is getting old and needs repairs, such as having the building repainted, repairs to the roof and back deck. To minimize cost, the Landlord wants the Property Manager to stay in the rental unit “for as long as he needs to be there” to repair what he can do, and coordinate professionals to do the rest.

In terms of why the Property Manager needs to move into the Tenant’s rental unit, the Landlord stated that as the Tenant pays the least amount of rent she believed that his unit should be used as she collects more rent from the other units.

The Landlord stated that the Property Manager has a full-time job, sometimes works late hours and has his children on weekends. She stated that by having him move into the subject rental unit it will allow him to repair and maintain the property during his free time.

The Landlord confirmed that the caretaker she intends to move into the rental unit is K.T., who is also her boyfriend. She stated that he will be paying the same as the Tenant for rent and he will also be paid a 10% management fee (based on the rent generated from the building), which equals about \$220.00 per month.

The Tenant responded to the Landlord's submissions as follows. The Tenant stated that to his knowledge the Landlord owned the rental property with her sister and her brother in law, R.P., and he was surprised to hear they are no longer owners. He noted that the Landlord did not provide any documentation to support the change in ownership.

The Tenant stated that he believes that the Landlord is trying to end his tenancy as she does not want to take care of required repairs. He noted that he has been asking for repairs for many years and his requests have gone unanswered. For example, he noted that the rental unit has never been painted in the 14 years that he has lived there.

The Tenant further stated that he does not believe the Landlord intends or needs to have a caretaker, rather she wants him to move out because he asked for repairs. The Tenant also noted that the people who rent the two suites are the ones who mow the lawn. He testified that K.T. has not done any repairs nor does he appear to be the Property Manager.

Analysis

The Landlord issued the Notice pursuant to section 49(6)(e) which reads as follows:

49...(6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...
(e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

As noted, the Landlord bears the burden of proving the reasons for ending the tenancy on a balance of probabilities.

The Tenant alleges the Notice was not given in good faith. He alleges that the real reason the Landlord seeks to end the tenancy is because he has asked that she repair the rental unit.

The Landlord stated that she has not been able to take care of repairs due to the low rents she receives from the rental unit. She stated that she is hopeful the caretaker, who is also her boyfriend, will be able to take care of some of the repairs while he is not working to minimize cost.

Residential Tenancy Branch Policy Guideline 2--Ending a Tenancy: Landlord's Use of Property provides in part as follows:

C. GOOD FAITH

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I accept the Tenants' affirmed testimony that the Landlord issued the Notice after he requested repairs to his unit.

While the Landlord conceded that the caretaker she intends to move into the unit, K.T., is her boyfriend, she only provided this information when asked about her relationship with the caretaker. Had that question not been asked I find it unlikely she would have volunteered her personal relationship with K.T.

The rental building has four separate units, two of which are occupied by one family. I accept the Tenant's evidence that the tenants who occupy the two units mow the lawn. I also accept his evidence that K.T. had not performed any duties as a property manager. Notably, this was not disputed by the Landlord.

I am not persuaded, by the evidence before me, that the Landlord requires a resident caretaker to look after this four-unit rental building. The Landlord gave vague testimony about general repairs she expects K.T. to perform during his free time. I am also not persuaded by the evidence before me that it is her true intention to have a resident caretaker. Rather, I find it likely the Landlord wishes to provide inexpensive accommodation for her boyfriend.

I therefore find that the Tenant's Application should be granted, and the Notice should be cancelled. The tenancy shall continue until ended in accordance with the *Act*.

As the Tenant has been substantially successful I also grant his request for recovery of the filing fee. He may reduce his next month's rent by \$100.00.

Conclusion

The Tenant's Application for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request to recover the filing fee is similarly granted; he may reduce his next month's rent by \$100.00 as recovery of this sum.

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: September 9, 2020

Residential Tenancy Branch