



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 13, 2020. Both parties also confirmed the tenants served the landlord with subsequent documentary evidence by placing it in the landlord's mailbox. Both parties confirmed the landlord served the tenant with his documentary evidence submission via email. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenants sought clarification on the landlord using a different last name for the female tenant of D(#1) instead of D(#2) on the notice to end tenancy (full names listed on cover sheet). Landlord confirmed that the female tenants last name was incorrectly listed. As both parties have confirmed the correct last name and that both parties understood who the notice was meant for the hearing shall proceed.

The tenants also sought clarification as the landlord served the 2 month notice dated August 1, 2020 by posting it to the rental unit door on August 1, 2020. The landlord confirmed that monthly rent is due on the 1st day of each month. Section 53 of the Act

states in part that if a landlord gives a notice to end tenancy gives a notice to end tenancy on a date that does not comply with subsections 53 and (3), the notice is deemed changed. The effective end of tenancy date is corrected to October 31, 2020.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that the landlord served the tenants with a 2 month notice to end tenancy issued for Landlord's Use of Property dated August 1, 2020 posted to the rental unit door on August 1, 2020. The 2 month notice provides for an effective end of tenancy date corrected to October 31, 2020 from the September 30, 2020 date shown. The reason provided on the notice states:

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).

The landlord selected the following on which close family member will occupy the unit.

The landlord or the landlord's spouse.

The child of the landlord or landlord's spouse.

The landlord stated that there is no bad faith as the landlord intends to occupy the rental unit with his son. The landlord stated that he works in the service industry and because of COVID, he is suffering financially. The landlord stated that because of this he and his son must occupy the rental unit. The landlord stated that he is currently renting in Abbotsford and must give notice to end tenancy.

The tenants provided written details which states,

We feel the notice is not in good faith. We were given three eviction notices to date. One informal via email in April 2020, one June 30, 2020. The June 30/20 eviction notice was disputed by the tenants and a Dispute Resolution was conducted on July

31/20 which was resolved in the tenants favor. We were served the 60 day eviction notice on August 1/20. We don't believe that the Landlord actually wants to take possession of the unit and he is trying to push us out.

[reproduced as written]

The tenants argued that the landlord's good faith is in question because in April 2020 the landlord emailed the tenant that they will be served with notice to end tenancy when allowed to do so because of the tenants having unlicensed vehicles and trailers. The tenants stated that in June 2020 the landlord issued a 1 month notice to end tenancy which was disputed. The tenants provided undisputed affirmed evidence that the result of that hearing had the landlord's notice cancelled. The tenants argued that within 24 hours after that hearing on July 31, 2020, the landlord issued the 2 month notice dated August 1, 2020.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, I accept the undisputed affirmed evidence of both parties that the landlord served the 2 month notice dated August 1, 2020 to the tenants for landlord's use.

Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, Good Faith 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. This includes

an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

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.

In this case the landlord has provided a reasonable explanation regarding the issuance of the 2 months notice in his direct testimony. The landlord stated that due to the current state of emergency; the landlord working in the service industry; the landlord is suffering financially; the landlord must give notice to end his rental tenancy in Abbotsford; and occupy the rental property in Langley with his son. However, the tenants have provide undisputed arguments that prior to the 2 month notice dated August 1, 2020, the landlord emailed the tenants warning them that a notice to end tenancy would be issued as soon as allowed under the state of emergency for breach of a material term of the tenancy which was having unlicensed vehicles and/or trailers on the property. The landlord served the tenants with a 1 month notice dated June 30, 2020 which was heard in a dispute resolution hearing on July 31, 2020. That notice was cancelled. The landlord served the 2 month notice on August 1, 2020, the next day. As such, the landlord has failed to provide sufficient compelling evidence that he is acting in good faith as I find that the tenants' submissions do provide cause to question the landlord's motives. As the tenant posed the question during the hearing, why did the landlord not issue the 2 month notice for landlord's use instead of the 1 month notice for cause that was issued first. I find that the landlord has failed to provide sufficient evidence on a balance of probabilities to prove good faith. The tenants' application is granted, the 2 month notice is set aside. The tenancy shall continue.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenants' application is granted.

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 16, 2020

Residential Tenancy Branch