



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On August 6, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated July 23, 2020 (“the Two Month Notice”). The Tenants also applied for the following relief:

- for a rent reduction
- to suspend or set conditions on the Landlords right to enter the rental unit
- for an order that the Landlord repair the rental unit
- for an order regarding locks and access to the unit
- for an order that the Landlord comply with the Act, regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing. The Tenant was assisted by a legal advocate. The Landlord was assisted by her son acting as her agent (“the Landlord”).

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the Two Month Notice. The Tenants' other claims are dismissed with leave to reapply.

Issues to be Decided

- Does the Landlord have a good faith intention to end the tenancy to allow a close family member to move into the rental unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2017 and is on a month to month basis.

The Landlord issued the Two Month Notice to the Tenants by posting it to the door. The reason for ending the tenancy cited within the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The child of the Landlord.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is October 1, 2020.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute it within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the Two Month Notice on August 6, 2020, within the required time period.

The Landlord provided testimony on why the Two Month Notice was issued. The Landlord's son testified that he is currently living with his parents in their home. He

testified that the Landlord has had a long-term plan to move back into the rental unit. He testified that he wants more space and freedom. He testified that he asked his mother whether he could move into the lower rental unit at the residential property and his mother agreed. He testified that his mother then issued the Two Month Notice.

The Landlords son testified that his parents have also issued a Two Month Notice to end Tenancy for Landlords Use of Property to the occupants who live above the Tenants with the intention to occupy it. The Landlord writes: I, the landlord Chun Yan Zhao, am a Christian, and hereby swear that my family honestly intends to move into the property at the dispute address, after the tenants have moved out.

The advocate for the Tenant submitted that the upper unit at the dispute address contains four bedrooms and the lower unit contains three bedrooms. He suggested that it is odd that the Landlord will be occupying the four-bedroom unit, and their son will be occupying the three-bedroom unit below.

The Tenants advocate submitted that the Landlord previously issued a Two Month Notice to End Tenancy for Landlord Use of Property which was disputed by the Tenants. The Advocate submitted that an Arbitrator cancelled that notice to end tenancy finding there were reasonable doubts about the intention of the Landlord to end the tenancy.

The Tenants advocate submitted that in the previous hearing the Landlord claimed that they had been evicted from their home and needed to move. The Tenant's advocate points out that the testimony provided today that the Landlord has had a long-term plan to move into the rental unit seems contradictory. The Tenant provided a copy of the March 30, 2020 Decision.

In November 2019 the Tenant applied for Dispute Resolution seeking relief including a reduction in rent for repairs, services or facilities agreed upon but not provided; for the Landlord to make repairs to the unit; for money owed or compensation for damage or loss under the Act. A hearing was scheduled for January 3, 2020 and a Decision was made on January 29, 2020. The Tenant provided a copy of the Decision.

The Tenant submitted that the Landlord has been ignoring their obligations for repairs to the unit; as they have not been responding to the Tenant's requests for repairs. He submitted that there are plumbing, and flooding issues, and the Landlord is trying to end the tenancy rather than meet obligations. The Tenant submitted that the Landlord does not provide an emergency contact number.

The Tenant testified that he had to make arrangements for a plumber to attend the rental unit and make emergency repairs. He testified that the Landlord reimbursed him for the cost of the repair.

The Tenant testified that there is still a municipal sewage gas issue that needs to be resolved.

In the Landlord's documents they submit when the Landlord received the complaint in March 2019, she went with her son to check but they could not smell anything peculiar.

The Landlord's son testified that the Landlord always responds to requests for repair and that the Landlord had offered to renovate the bathroom; however, the Tenants declined the offer. The Landlord submitted that the Tenants could send a text to the Landlord; however, the Tenant has declined to provide the Landlord with phone contact information.

When the Landlord was asked if there was a reason why the Landlord is moving, the Landlord's son stated that they always planned to move back. He testified that the Landlord never received a notice to end tenancy from the owner of where they currently reside. The Landlord testified that they cannot live in the lower of their friends house forever. The Landlord submitted that there are also other personal reasons for needing to move.

The Tenant stated that they never received an offer from the Landlord to renovate the bathroom.

When I asked the Landlord why the Tenants had to arrange for emergency repairs, the Landlord's son stated that it was a communication issue because his mother cannot speak English and is hard of hearing. He stated that the Tenant was video taping his mother. The Landlord's son stated that his mother did not understand the issue and he was not there at that time.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the

Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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)).

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse. I find that the property owner intends for her son to move into the rental unit and therefore he meets the definition of a close family member. I find that the Two Month Notice complies with section 49(3) of the Act.

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit. I accept the Landlord's testimony that he intends to occupy the rental property.

I have turned my mind to whether or not there is sufficient evidence to establish that the Landlord intends to defraud or deceive the Tenant. While it may be considered odd that the Tenant plans to occupy a three-bedroom unit; there is nothing in the Act that prohibits this, and I find that this is not sufficient evidence to prove that the Landlord intends to defraud or deceive the Tenant.

I note that in the Decision dated March 30, 2020 the Landlord explained that he was required to move out of his current accommodation. I find that the Landlord did not say he was evicted. There could be other factors in play for the Landlord wanting, or being required, to move into their own home. I assign very little weight to the Tenant's submission that the Landlord stated he was evicted and that the Landlords statements on why they are moving is inconsistent.

With respect to the issue of whether or not the Landlord has an ulterior motive or is trying to avoid obligations under the Act, I have considered the following:

I have considered that there was a previous hearing on January 3, 2020 based on the Tenants' application which included a request for a rent reduction and for a repair order. I note that on January 29, 2020, an Arbitrator found there was insufficient evidence from the Tenant to support that the Landlord failed to fulfill their obligations required by section 32 of the Act (repairs). The Arbitrator also found that the Tenant provided insufficient evidence to support a rent reduction related to use of the yard and storage.

I have also considered that the Landlord previously attempted to end the tenancy by issuing a Two Month Notice to End Tenancy for Landlord Use of Property dated December 25, 2019. I note that on March 30, 2020 an Arbitrator found that there have been several difficult interactions between the parties and stated that there may be additional reasons which fueled the issuance of the Notice. On that basis the Arbitrator found that there are reasonable doubts about the intention of the Landlord to end the tenancy and the Two Month Notice was cancelled. I find that difficult interactions and the *possibility* of other reasons is not sufficient evidence of an ulterior motive.

With respect to repairs, I find that the Landlord is not avoiding an obligation to make repairs. The Landlord not understanding a request to make a repair is not a refusal to make repairs. The Tenant arranged for a repair and the Landlord did not try to avoid obligations to reimburse the Tenant for the repair cost. While I find that the Landlord should have responded to the Tenants request for repair, this occurrence does not establish a history or pattern of the Landlord avoiding an obligation to make repairs. The Arbitrator in the Decision dated January 29, 2020 made no finding that the Landlord was required to make repairs other than to provide a key for a door.

While the Tenant submits that there are still sewer gases present in the bathroom that require repair; there is no documentary evidence provided from the Tenant regarding this issue. The Landlord's documentary evidence provides that they checked the unit and detected no smell and also that a contractor did not find any issue. I find that the Landlord responded to the Tenant's complaint and there is insufficient evidence from the Tenant that the Landlord is attempting to avoid an obligation.

While I accept the presence of communication difficulties present between the parties and a contrast between their understanding of rights and responsibilities under the Act, I find that the Tenant has provided insufficient evidence to establish that the Landlord does not have the honest intention to live in the rental unit. I also find that there is insufficient evidence from the Tenant to support that the Landlord is ending the tenancy

in an attempt to avoid obligations under the Act, tenancy agreement, or an Arbitrators Order.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 23, 2020, is dismissed.

Under section 55 of the Act, when a Tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the required form and content. The Landlord is entitled to an order of possession for the rental unit on the effective day of the Notice.

The Landlord is granted an order of possession at 1:00 p.m. on October 1, 2020, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 23, 2020, is not successful. The tenancy is ending.

The Landlord is granted an order of possession at 1:00 p.m. on October 1, 2020, after service on the Tenant.

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 23, 2020

Residential Tenancy Branch