



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 tenants' 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant RK (the tenant) confirmed that they received the 2 Month Notice posted on their door by Landlord KD (the landlord) on August 15, 2020, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants on September 3, 2020, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlords have owned this two unit property for many years, and have been renting out parts of this home since 1996. They retired two years ago and have been spending their winters in the United States. On May 15, 2020, the landlords moved back into the main suite in this home on a permanent basis. The main suite is comprised of one bedroom on the upper level and two bedrooms on the lower level. There is also a small den/office in this suite. The landlord testified that they decided to reside in this suite as the global COVID-19 pandemic has made it unlikely that they will be spending time in the United States for the foreseeable future.

The tenant gave undisputed sworn testimony that they first moved into a separate one bedroom suite in this home on October 1, 2015 on the basis of a fixed term tenancy. Monthly rent was originally set at \$1,000.00, payable in advance on the first of each month, plus hydro and heat. The landlords continue to hold their \$500.00 security deposit for this tenancy.

The landlord's 2 Month Notice, entered into written evidence, identified the following reasons for seeking an end to this tenancy by October 31, 2020:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

In their written evidence and their sworn testimony, the landlords maintained that they were planning to use the rental suite for their personal use, and were no longer intending to rent it out to tenants.

The tenants asserted that the landlords were not acting in good faith in issuing the 2 Month Notice, as the landlords' true intention was to re-rent the premises to tenants who would be able to pay a much higher monthly rent. The tenant said that their current monthly rent is "way below" what the landlords could currently obtain in the tight rental market in this resort community.

To support their assertions, the tenants provided written evidence to demonstrate that for a number of years, each time the tenancy came up for renewal, the landlord's agent attempted to extract considerably more monthly rent from the tenants' suite. Although the landlords' agent attempted to obtain \$1,350.00 in monthly rent, they eventually agreed to the monthly rent of \$1,200.00, on a fixed term tenancy agreement they signed on April 25 and 30, 2019, for the fixed term from December 1, 2018 until November 30,

2019. The tenants provided written evidence that the landlords routinely attempted to obtain more monthly rent from the tenants, in contravention of the legislated amounts of rent increases that landlords could charge existing tenants.

In their written evidence, the tenants submitted an affidavit used in a previous dispute resolution hearing (see file number above) in which they recorded a telephone conversation with the landlord's then agent. In that statement, the landlord's then agent made many statements regarding landlords' motivations generally and specific to this tenancy in obtaining the maximum rent possible in this resort community.

The tenant observed that the landlords live in a spacious house and that their claim that they are going to use this space themselves is in contrast to the efforts they have made in the past to extract more rental income out of this rental suite. The tenant said that the landlords have a demonstrated record of being only interested in earning more money from this rental suite and exhibit little credibility in claiming that they would use the space themselves.

The landlords provided undisputed written evidence maintaining that they asked for additional monthly rent at a time when they were unfamiliar with recent changes to the *Act*, which prevented landlords from obtaining rent increases for those with fixed term tenancies beyond the level allowed pursuant to the *Act*. Once they became aware of the changes to the *Act*, they gave undisputed sworn testimony and provided written evidence that they ceased their efforts to obtain unauthorized increases in rent from this rental suite.

At the hearing, the landlord said that they planned to use the suite the tenants were renting "100 %" for their "own personal use" and that they were "done renting it out." The landlord said that over the Christmas holidays they were planning to have family stay in the currently rented suite. They said that as their daughter was getting married in the spring of 2021, they planned to have this space available for out of town family and guests during the period of the wedding. The landlord also said that the landlords were finding the space in their existing suite "a little tight" for their needs, and planned to use the tenants' suite for an exercise area and hobby area. The landlord also stated that their plans may also include removing the wall between the rental suite and the remainder of the home, as well as possibly expanding the lower level of the home.

Landlord MD was emphatic in her sworn testimony that the suite currently rented by the tenants would "never be rented out again" as long as the landlords own this home. Landlord MD said that after their retirement and after the tenants in the larger suite in

this home abandoned the suite on short notice, they decided that they no longer wanted renters in their retirement home. Landlord MD also said that they fully realized that the landlords would be exposing themselves to a huge financial penalty, which I noted would exceed \$14,000.00, if they rented out the premises and did not use the premises for the purpose stated in their 2 Month Notice.

Analysis

Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenants submitted their application to cancel the 2 Month Notice on August 28, 2020, they were within the time limit for doing so, and the landlords must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

(3) 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.

Residential Tenancy Branch Policy Guideline 2A has been issued to assist arbitrators in making determinations regarding 2 Month Notices issued to tenants when, as was the case in this instance, the "good faith" of the landlord has been questioned by the tenants. This Policy Guideline reads in part as follows:

B. 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. 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...

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 considering this matter, I note that the tenants have raised legitimate questions that the landlords' previous history with respect to their attempts to increase their monthly rent far beyond what would be allowed under the *Act* is at odds with the landlords' claim that they no longer wish to rent out the premises and want and need it for their personal use. However, I must also take into account that there have been many changes in the landlords' circumstances since 2018 to explain the landlords' change of heart and decision to remove this suite from the rental market and use the premises themselves. These changes include but are not limited to:

- the landlords retirement;
- the landlords' recent discontinuation of their practice of spending winters in the United States since the onset of the global COVID-19 pandemic;
- the abandonment of the other, larger suite in this rental home by the tenants in May 2020;
- the landlords' decision to reside in the previously rented larger suite in this home and commencement of their residence there as of May 2020;
- the increased social distancing restrictions necessitating separate living arrangements for out of town guests and family members during the COVID-19 pandemic, leading to the landlords' identification of this space as suitable for out of town guests and family members during the Christmas holiday period and in the spring of 2021, when their daughter's wedding is planned; and
- the changed circumstances regarding contact with those outside social distancing bubbles that would increase the landlords need for separate space for exercise equipment and hobby use.

As the landlords noted, despite the potential hardship caused by their decision to remove this tenanted suite from the rental market, this is their home, a place where they now live, as opposed to the past when the remainder of the home was occupied by other tenants.

Whether or not the landlord's previous agent managing this property accurately described the landlords' intentions when the tenants recorded one of their conversations, I find that there have been so many changes in the landlords' circumstances since 2018 that the affidavit presented by the tenants has little bearing on the situation as it existed in August 2020, when the landlords issued their 2 Month Notice. I also find that there is validity to the landlords' claim that they were attempting to increase the monthly rent in 2018 at a time of transition in the *Act*, unaware that landlords could no longer attempt to negotiate greatly increased rents at the expiration of a fixed term tenancy agreement.

As the landlord stated at the hearing, it is difficult to prove, or for that matter to disprove, that the landlords truly intend to use the rental suite themselves as they have claimed in their 2 Month Notice.

While the parties have presented evidence to support their respective positions, I find the landlords have provided emphatic statements in their written evidence and in their sworn testimony that are credible responses to the tenants' claims that the landlords are not acting in good faith. In this regard, I note the following statement in the landlords' written evidence:

...We as owners, cannot stress enough that we DO NOT have any intentions of re-renting the suite. We want it back for our own personal use. Mr. K is welcome to check periodically to confirm this.

(emphasis in original)

I find this written offer that the landlords have provided is very compelling evidence of the landlords' good faith in issuing the 2 Month Notice. Rather than just maintaining they won't re-rent the premises, the landlord has given the tenant what appears to be an open-ended offer to allow them to check periodically whether the landlords are abiding by their commitment to not re-rent the premises to others. This written assurance is truly unusual in my experience. Similar statements that they had no intention of ever renting out the suite again were also made by both landlords at the hearing. In this regard, I found the emphatic nature of Landlord MD's sworn testimony was particularly compelling and had the ring of authenticity that the landlords will not be re-renting the premises to others. The landlords outlined specific plans they have for use of the tenants' suite in the coming months and know the significant financial consequences they will face if they do not use the premises for the purposes stated in their 2 Month Notice.

After considering the written evidence of the parties and their sworn testimony, I find on a balance of probabilities that the landlords have demonstrated to the extent required that they have issued the 2 Month Notice in good faith. For these reasons, I dismiss the tenants' application to cancel the 2 Month Notice.

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*". I am satisfied that the landlords' 2 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect on October 31, 2020. Since the tenants' application is unsuccessful, I make no order with respect to their application to recover their filing fee from the landlords.

Conclusion

I dismiss the tenants' application for dispute resolution in its entirety. The landlords are provided with a formal copy of an Order of Possession effective at 1:00 p.m. on October 31, 2020. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 02, 2020

Residential Tenancy Branch