



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; 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 the tenant confirmed that they received the 2 Month Notice posted on the tenant's door by the landlord on August 13, 2020, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they were handed a copy of the tenant's dispute resolution hearing package on September 4, 2020, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. The tenant confirmed that they received a copy of the landlord's written evidence, which comprised of a copy of the tenancy agreement, the 2 Month Notice and a copy of part of the passport of the landlord's daughter. I find that this written evidence was duly served in accordance with section 88 of the *Act*. The tenant did not enter any written evidence for this hearing.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On October 19, 2018, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy for this six bedroom home that was to run from October 22, 2018 until October 21, 2019. The tenancy continued on a month-to-month basis after the expiration of the original Agreement. Monthly rent is set at \$3,700.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenant's \$1,800.00 security deposit paid when this tenancy began. At present, the tenant testified that five adults and two children live in this rental home.

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

- *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 the 2 Month Notice, the landlord maintained that their daughter plans to move into this rental property.

The tenant questioned whether the landlord issued the 2 Month Notice in good faith, questioning whether the landlord's daughter truly intends to move into this home.

The landlord testified that their daughter, a student at a university in another province, is attending classes online and works four days per week in Vancouver. They said that their daughter is now an adult and no longer wants to live with the landlord in their home in West Vancouver. The passport of the landlord's daughter revealed that they are now twenty years of age. The landlord said that they argue with each other and living in the home currently occupied by the tenant would locate the landlord's daughter close to friends that she acquired when the landlord and their daughter first moved to the Lower Mainland in 2012. The landlord said that their daughter lived alone in the current rental home from 2017 until this tenancy began in October 2018, as the landlord's daughter did not wish to transfer schools in their last year of high school. Thus, the landlord maintained that their daughter lived in this six-bedroom rental home in the past by herself when she was younger.

The tenant maintained that the landlord owned another property in the same municipality as the rental home. The landlord gave sworn testimony that this was not correct and that their name is not listed as an owner on any other property. The

landlord also said that because the rental home was where the landlord's daughter resided from 2012 to 2018, and lived there on her own for their last year of high school, that the rental home is the best option for their daughter to live apart from the landlord now that the landlord's daughter is an adult. The landlord said that the rental home is accessible to public transit so that they can commute to work in Vancouver, and can keep in touch with their circle of friends they developed in their adolescent years living in the rental home.

The landlord did not present anything in writing from their daughter attesting to their intention to move into the rental home, nor did the landlord's daughter attend this hearing. The landlord explained that their daughter was working at the time of the hearing and could not participate in the hearing.

The tenant gave undisputed sworn testimony that there have been three other attempts by the landlord to end this tenancy since the spring of 2019. The tenant said that the first of these attempts to end the tenancy for cause happened at a time when the landlord was embarking on efforts to sell the rental home. The tenant gave undisputed sworn testimony that one of the reasons cited on the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) was that there were an unreasonable number of occupants living in this home. The second of the landlord's notices to end tenancy was for unpaid utilities and rent that the landlord claimed was owing as a result of an additional rent increase that the landlord attempted to initiate. The tenant said that the third notice to end tenancy issued by the landlord was again a 1 Month Notice for cause. The tenant gave undisputed sworn testimony that each of these attempts by the landlord to end their tenancy was unsuccessful.

The tenant testified that they have not paid all of their rent for July and August 2020. They testified that \$6,600.00 in rent remains owing at this time for the period when landlord could issue notices to end tenancy for unpaid rent that became owing during the global COVID-19 pandemic. They said that when they submitted a repayment plan to the landlord the landlord became angry and issued the 2 Month Notice to them.

The tenant also testified that they understand that the landlord still has the intent of putting the property up for sale, noting that the landlord's translator for this hearing was the landlord's real estate agent, an assertion not denied by the landlord or the translator at this hearing.

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 tenant submitted their application to cancel the 2 Month Notice within 15 days of receiving it, they were within the time limit for doing so. The landlord 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...

I find that the parties supplied almost no written evidence to support their respective positions with respect to the tenant's application to cancel this 2 Month Notice. Without anything in writing from the landlord's daughter, a landlord seeking to obtain an end to a tenancy to enable their adult child to reside in the residence would normally be expected to ensure that the family member moving into the rental unit would attend the hearing and provide sworn testimony to that effect. In this case, I find it was even more important to hear direct testimony from the landlord's daughter as to their true intentions with respect to moving into this currently rented home.

Although there is undisputed sworn testimony that the landlord's daughter lived in this six-bedroom alone for the last year of high school, the landlord's daughter is enrolled in a university program in another province. University classes at most universities are being offered online during the current global pandemic; however, there is considerable uncertainty as to how long this option will be available. Circumstances have been changing frequently during the pandemic, affecting all facets of life.

When asked about the current year of their daughter's university program, the landlord was uncertain. Given that the landlord did not even know the year of the program in which their daughter was enrolled, the landlord failed to provide any more information about their daughter's studies, such as evidence as to how long their daughter's current online classes remained an option. If it became necessary for their daughter to attend some classes in person in the coming months, it would no longer be feasible for them to simultaneously reside in the rental home.

Given that the landlord's daughter is enrolled in a university in another province and could not possibly remain in the rental home if they were required to return to in-person classes, it was important to hear directly from the landlord's daughter. The tenant has also asked valid questions as to whether a single student would in fact plan to live by themselves in a six bedroom house currently occupied by seven people. The landlord's daughter was also not available to answer questions as to how living in this home facilitated their access to their employment in a distant community, considerably further from that community than where they are currently residing with the landlord.

In considering this matter, I also attach considerable weight to the previous unsuccessful attempts the landlord has initiated over the past year and a half to end this tenancy for various reasons. I also attach weight to the undisputed testimony before me

that the tenant remains in arrears of at least \$6,600.00 in unpaid rent for the period of the pandemic, and that the tenant gave undisputed testimony that the landlord issued the 2 Month Notice after the landlord was dissatisfied with the repayment plan that the tenant proposed.

Based on a balance of probabilities and after taking into account the very limited written evidence before me and the sworn testimony of the parties, I find that the landlord has failed to demonstrate to the extent required that their daughter plans to occupy the rental unit for at least six months and that the landlord has no ulterior motive in issuing the 2 Month Notice. I find that the tenant has raised sufficient valid concerns that the landlord has not issued the 2 Month Notice in good faith. As such, I allow the tenant's application to cancel the 2 Month Notice.

As the tenant has been successful in this application, I allow the tenant to recover their \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The 2 Month Notice is cancelled and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to recover their \$100.00 filing fee from the landlord. As the tenant testified that they continue to owe the landlord unpaid rent and in accordance with section 72 of the *Act*, I order that \$100.00 be deducted from the amount of rent that remains owing for this tenancy.

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