



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACADIA COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, OPL, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on October 20, 2020 the Dispute Resolution Package was personally served to the Tenant. The Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which he applied to cancel a Two Month Notice to End Tenancy for Landlord's Use. The Tenant stated that the Dispute Resolution Package was served to the Landlord, via registered mail, on September 17, 2020. The Tenant submitted a Canada Post receipt that corroborates registered mail was sent on September 17, 2020.

The Agent for the Landlord stated that the Landlord never received the Tenant's Application for Dispute Resolution in the mail, although on October 20, 2020 the Residential Tenancy Branch advised him that the Tenant had filed an Application for Dispute Resolution. The Agent for the Landlord stated that the Residential Tenancy Branch provided him with a courtesy copy of the Notice of Hearing for the Tenant's Application for Dispute Resolution.

Even if I accepted the Agent for the Landlord's testimony that he did not receive a copy of the Tenant's Application for Dispute Resolution from the Tenant, I find it reasonable to proceed with this hearing. I find it reasonable to proceed with the hearing, in part, because the Landlord was made aware of the Tenant's Application for Dispute Resolution by the Residential Tenancy Branch on October 20, 2020 and he was, therefore, aware that the Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use would be considered at these proceedings.

More importantly, I find it reasonable to proceed with this hearing even if the Tenant did not serve the Landlord with a copy of the Tenant's Application for Dispute Resolution, because the issue to be considered in the Tenant's Application for Dispute Resolution is essentially the same issue to be considered in the Landlord's Application for Dispute Resolution. I find that the Landlord is not prejudiced by the hearing proceeding without delay, as the Landlord knew, or should have known, that the merits of the Two Month Notice to End Tenancy for Landlord's Use would be considered at the hearing.

On September 15, 2020 and September 17, 2020, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, with the Application for Dispute Resolution. The Landlord acknowledged receiving this evidence in the mail and it was accepted as evidence for these proceedings.

On September 22, 2020, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on September 25, 2020. The Landlord acknowledged receiving this evidence in the mail and it was accepted as evidence for these proceedings.

On October 22, 2020, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on October 22, 2020. The Tenant acknowledged receiving this evidence in the mail and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant and witness affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be upheld, and if so, should the Landlord be granted an Order of Possession?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on August 01, 2005;
- rent is due by the first day of each month;
- in early September of 2020, the Landlord mailed a Two Month Notice to End Tenancy for Landlord's Use to the Tenant;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by November 30, 2020;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the Landlord is a family corporation and a person with voting shares or a close family member of that person intends, in good faith, to occupy the rental unit;
- this unit is in a residential complex with 16 rental suites;
- the Agent for the Landlord is a director or the company that owns the residential complex;
- at a previous dispute resolution proceeding in August of 2020, a Residential Tenancy Branch Arbitrator determined that the Two Month Notice to End Tenancy for Landlord's Use that was served to the occupant of unit 202 should be set aside, because the Landlord failed to establish the Notice was served in good faith;
- in 2018 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause because his employment as a caretaker had ended; and
- at a dispute resolution proceeding in May of 2018, a Residential Tenancy Branch Arbitrator determined that the One Month Notice to End Tenancy for Cause should be set aside.

The Agent for the Landlord stated that:

- his son is currently living with him in his brother's home;
- his brother has asked the Agent for the Landlord, his wife, and his son to move out of the home;
- in July of 2020 he served the occupant of unit 202 in this residential complex with a Two Month Notice to End Tenancy for Landlord's Use;
- he served the occupant of unit 202 with a Two Month Notice to End Tenancy for Landlord's Use because he and his wife intended to move into this unit;

- on August 02, 2020 the occupant of unit 108 gave notice to end their tenancy;
- he renovated unit 108 and intends to move into it next week;
- on March 14, 2020 he served the occupant of unit 104 in the same residential complex with a Two Month Notice to End Tenancy for Landlord's Use;
- he served the occupant of unit 104 with a Two Month Notice to End Tenancy for Landlord's Use because he and his wife intended to move into unit 104;
- the occupant of unit 104 passed away after being served with the Two Month Notice to End Tenancy for Landlord's Use;
- unit 104 was fully vacated on April 13, 2020;
- the Landlord renovated unit 104 and re-rented the unit to a third party;
- the Agent for the Landlord never moved into unit 104 due to fears about the COVID pandemic;
- the occupant of unit 105 in this residential complex moved in March of 2020;
- unit 105 was renovated and re-rented;
- unit 105 would not have been suitable for his son, as it is a one bedroom unit and his son only requires a bachelor's suite.

The Tenant stated that unit 208 in this residential complex is empty. The Landlord stated that unit 208 is occupied and has been rented to the same person for approximately 2 years. The Witness for the Tenant stated that unit 208 has been vacant for approximately 3 months.

The Tenant submits that this Two Month Notice to End Tenancy for Landlord's Use was not served in good faith. He submits that the Landlord has a history of ending tenancies so he can renovate them and re-rent them for more money. This submission is based, in part, on the decision from the dispute resolution process in August of 2020, in which the Arbitrator determined that the Two Month Notice to End Tenancy for Landlord's Use that was served to the occupants of unit 202 was not served in good faith.

The Witness for the Tenant stated that:

- she lives in unit 202 in this residential complex;
- in March of 2020 the Landlord told her she would have to move if the Tenant would not agree to a rent increase;
- she did not agree to pay increased rent;
- in July of 2020, the Landlord served her with a Two Month Notice to End Tenancy for Landlord's Use, in which the Landlord declared that he would be moving into the rental unit; and
- she successfully disputed the Two Month Notice to End Tenancy for Landlord's Use.

Upon questioning from the Agent for the Landlord, the Witness for the Tenant stated that she agreed to pay for additional parking, at the request of the Landlord. The Agent for the Landlord did not ask any further questions of this witness; however, he denies telling the Tenant that she would have to move if she did not agree to a rent increase.

The Witness for the Landlord stated that he is the Agent for the Landlord's son, and that he intends to move into unit 107 of this residential complex. The Tenant asked no questions of this witness.

Analysis

Section 49(4) of the *Residential Tenancy Act (Act)* permits a landlord that is a family corporation to end a tenancy if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that in September of 2020 the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, which was served pursuant to section 49(4) of the *Act*. On the basis of the undisputed evidence, I find that this Notice declared that the Tenant must vacate the rental unit by November 30, 2020.

On the basis of the undisputed evidence, I find that the Agent for the Landlord owns voting shares in the corporation that owns the rental unit. I therefore find that the Landlord would have grounds to end this tenancy, pursuant to section 49(4) of the *Act*, if the Agent for the Landlord's son intended, in good faith, to occupy the unit.

Even if I accepted the testimony of the Agent for the Landlord and the Agent for the Landlord's son regarding the son's intent to move into the rental unit, I find that the Landlord has submitted insufficient evidence to establish that the Two Month Notice to End Tenancy for Landlord's Use was served in good faith.

Residential Tenancy Branch Policy Guideline 2A reads, 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.

When considering the issue of good faith, I was influenced by the Two Month Notice to End Tenancy for Landlord's Use that was served to the occupant of unit 104 in this residential complex in March of 2020, because the Agent for the Landlord and his wife intended to move into unit 104. In that situation unit 104 was vacated in April of 2020, the Landlord never moved into unit 104, and unit 104 was subsequently re-rented to a third party. The fact that the Landlord ended the tenancy in unit 104 in March of 2020 without moving into the unit, in my view, suggests that the Landlord is not acting in good faith in ending this tenancy.

In adjudicating this matter, I placed no weight on the Agent for the Landlord's explanation that he did not move into unit 104 due to fears about the COVID pandemic. Given that he believed it was safe enough to show the unit to a third party during the pandemic and to allow the third party to move into the rental unit, I find that any alleged fears of the pandemic was not sufficient reason for him not to move into unit 104, particularly when he could have simply delayed the move for a short period of time.

When considering the issue of good faith, I was further influenced by the undisputed evidence that the occupant of unit 105 in this residential complex moved in March of 2020 and that the unit was subsequently renovated and re-rented. Although the Agent for the Landlord contends this unit was not suitable for his son, as it is a one bedroom unit and his son only needs a bachelor's suite, I find that it did offer a reasonable

alternative to ending a long term tenancy. I find that the Landlords' failure to pursue this reasonable alternative suggests that the Landlord is not acting in good faith in ending this tenancy.

When considering the issue of good faith, I was further influenced by the Tenant's submission that unit 208 is currently empty. I favour the Tenant's testimony that this unit is empty over the Agent for the Landlord's testimony that it is not empty, as the Witness for the Tenant corroborated the testimony of the Tenant. The Witness for the Tenant, who lives in unit 202 and would therefore have reasonable knowledge of the matter, stated that this unit has been empty for approximately three months.

As unit 208 has been empty for several months, I find that the Agent for the Landlord's son could move into unit 208, rather ending this long term tenancy. I find that the Landlords' failure to pursue this reasonable alternative suggests that the Landlord is not acting in good faith in ending this tenancy.

When considering the issue of good faith, I was further influenced by the a Residential Tenancy Branch Arbitrator's decision, in August of 2020, that a Two Month Notice to End Tenancy for Landlord's Use that was served to the occupant of unit 202 should be set aside, because the Landlord failed to establish the Notice was served in good faith. The fact a previous Arbitrator has determined that the Landlord was not acting in good faith when the Landlord attempted to end the tenancy in unit 202, in my view, suggests that the Landlord is not acting in good faith in ending this tenancy.

In adjudicating this matter, I have placed no weight on the One Month Notice to End Tenancy for Cause that was served to the Tenant in 2008. Although this clearly establishes a previous attempt to end this tenancy, I find it is too far removed from service of this Two Month Notice to End Tenancy for Landlord's Use to establish any correlation.

In adjudicating this matter, I have placed no weight on Witness for the Tenant's testimony that in March of 2020 the Agent for the Landlord told her she would have to move if the Tenant would not agree to a rent increase, and that he served her with a Two Month Notice to End Tenancy for Landlord's Use after she did not agree to pay increased rent. I have placed no weight on this testimony because it is denied by the Agent for the Landlord and there is no evidence that corroborates the Witness for the Tenant's testimony that would cause me to favour her testimony over the Agent for the Landlord's testimony.

As the Landlord has submitted insufficient evidence to establish that the Two Month Notice to End Tenancy for Landlord's Use was served in good faith, I set aside the Notice and I dismiss the application for an Order of Possession.

Conclusion

The application for an Order of Possession is dismissed and the Two Month Notice to End Tenancy for Landlord's Use is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 10, 2020

Residential Tenancy Branch