



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to section 49 of the *Residential Tenancy Act* (the "Act") for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate. The landlords were assisted by their property manager.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials and based on the testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in January 2017. Monthly rent is \$1,100.00 payable on the 15th of each month. The rental unit is a suite in a detached home with the landlord residing on the main floor of the building. There are 4 rental units in the building. The tenancy agreement was signed by both the named respondents who are mother and daughter.

The landlord's property manager issued a 2 Month Notice dated September 22, 2020 with an end of tenancy date of December 1, 2020. The reason provided on the notice for the tenancy to end is that the landlords or a close family member intends in good faith to occupy the rental unit.

The landlords explained that the named respondent RP intends to personally occupy the rental suite. RP testified that they have been residing out of the country for the past few years, but they have relocated to the province and intend to live in close proximity to their family. The landlords testified that the respondent AN, the mother of RP, is aging and has developed some health issues making the presence of RP in the building beneficial. The landlords testified that they are both presently residing in the main floor unit but the sharing of accommodations and lack of privacy makes this untenable for the long term. The landlords submitted documentary evidence including a valid BC interim Driver's License with updated address, correspondence reinstating their Medical Services Plan and a one-way ticket used by AN to relocate to the province.

The tenant submits that they disbelieve that the landlord has issued the 2 Month Notice in good faith. The tenant submits that the landlord AN owns property and conducts business out of the country and that there is little evidence that AN has relocated to the province and intends to occupy the rental suite. The parties gave some evidence regarding renovation work that was undertaken to the rental property and some future work that will be performed prior to the rental unit being occupied by AN. The tenant submits that the scope of work required for the rental unit will make the suite uninhabitable for the landlord AN.

Analysis

In order to evict a tenant for landlord's use of the property the landlord has the burden of proving the reasons on the Notice.

The tenant raised the issue of the intention of the landlord, a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must

honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has little merit. I find the landlord's conduct, timeline of events and circumstances to support the landlord's good faith intention to occupy the rental unit with no ulterior motive. I find the issuance of the Notice, shortly before the landlord AN relocated to the province and reinstated their Medical Services Plan and Driver's License to be consistent with their explanation that they intend to permanently reside in the province. I find the evidence to be sufficient to determine that AN has moved back to the province and find the absence of documentary evidence pertaining to the disposition of business and property interests elsewhere to have little probative value. I accept the evidence of the landlords that AN intends to occupy the rental unit and has relocated to do so. I accept that this is not a capricious decision but one which is based on the interests of the members of the family.

I find that the landlords answered questions posed by the tenant and their advocate reasonably, cogently and consistently. I find that much of the concerns raised by the tenant about the rental unit not being appropriate accommodation for the landlord AN are predicated on unestablished assumptions about AN moving into the suite with romantic partners or while renovations are ongoing.

I find that the landlord has provided sufficient evidence to support their intended use of the property. I find that the landlord's testimony and documentary evidence demonstrate the good faith intention of the landlord. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed.

Therefore, I dismiss the tenant's application to cancel the landlord's 2 Month Notice.

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

55 (1) 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..., and

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

I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, as it is in the prescribed form, is signed and dated by the landlords' agent, identifies the address of the rental unit and provides the reason for the tenancy to end. I, therefore issue a formal Order of Possession in the landlords' favour pursuant to section 55.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant on the premises 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: December 18, 2020

Residential Tenancy Branch