



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Act*, and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both of the landlords attended the hearing and were represented by their advocate, an articulated student MM. The tenant also attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence package. Both parties stated they had no concerns about timely service of documents.

Preliminary Issues

At the commencement of the hearing, the tenant sought an adjournment. She stated that her son was admitted to a hospital last Thursday and that he was scheduled for discharge today. No specific time for discharge was set, however the tenant stated that her presence is required for the discharge as her son will be put into her care. The tenant has no paperwork to back up her adjournment request as they will be given to her later today upon her son's release.

The landlord's advocate did not agree to adjourn the hearing, stating that the landlord's financial position continues to be harmed while the tenant stays in the rental unit. He argues that his client was not served with any request to adjourn or any evidence to

substantiate the tenant's claim that her son is in the hospital awaiting discharge. The landlord's advocate further argues that the purpose of the hearing is for the landlord to satisfy me he is ending the tenancy in good faith for the reasons stated on his notice to end tenancy; the tenant does not bear the onus to prove anything.

The tenant then stated that although she is emotionally overwhelmed, she is able to proceed with the hearing as long as it ended within the hour. I reassured the tenant that the hearing would conclude within the hour and that she could attend to her son's discharge after the hearing was over. The tenant was willing to proceed to have the merits of her application heard before me during this hearing.

Second, the tenant advised that the two other applicants named on her Application for Dispute Resolution are her children, both minors. As her children are not signatories to the tenancy agreement, they are not tenants as defined under the *Act*. Their names have been removed from this decision.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show the reasons for ending the tenancy are valid?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one year tenancy began on June 19, 2019, becoming month to month at the end of the fixed term. Rent was set at \$2,700.00 per month, payable on the first day of each month. The tenant was required to pay a security deposit of \$1,350.00.

On September 30, 2020, the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use. The tenant acknowledged being served with

it on that date. A copy of the Two Month Notice to End Tenancy for Landlord's Use was provided as evidence. The effective date stated on the Notice is November 30, 2020 and the reason for ending the tenancy was because the rental unit will be occupied by the landlord or the landlord's close family member. The notice states the occupants are to be the landlord and the landlord's spouse.

The landlord's advocate gave the following synopsis of reasons for ending the tenancy. The landlord was laid off his job at the end of July. Included in the landlord's evidence is a letter of termination from the landlord's employer. The landlord was also evicted from his home as the landlord's own accommodations were tied to his employment as a caretaker, manager or superintendent of a property. According to the one month eviction notice provided as evidence, the landlord had to vacate his home by August 30th.

The advocate submits that because the tenant has been delinquent in paying her rent, the landlord has fallen into financial difficulty in paying the mortgage on the rental unit. He has used his lines of credit to their maximum and cannot afford to continue subsidizing the tenant's rent. The landlord has served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and that hearing has been set for a date in the future.

The landlord further submits that the tenant, her guests or occupants have also been disobeying strata bylaws and rules; potentially incurring fines for the landlord. Copies of infraction notices were provided as evidence. The potential of fines being incurred are also concerning to the landlord as this could become a further financial hardship for him.

The landlord submits that he cannot afford to pay rent where he is currently living while paying the mortgage on the rental property – all while he has no job. The landlord seeks to move into the unit he owns and rents out to the tenant in order to decrease his own financial liability. The landlord's advocate states his client recognizes that if he and his family don't move in, he is liable to reimburse the tenant with 12 month's compensation.

The tenant provided the following testimony. It would be difficult for the tenant to move in the 2 months timeframe she was given. She has a son who has mental issues and a teenage daughter. She has recently declared bankruptcy and the location of the rental unit is convenient for her family as they don't have a car and access to public transit is close.

The tenant provided testimony regarding a scenario whereby her son gave the landlord a rent payment in cash, however I advised the tenant that my decision would be focused on whether the landlord's shown good faith in ending the tenancy -- not whether rent payments were made. The tenant gave further testimony regarding her son's access fob not working which bore no relevance to the decision I had to make.

The tenant raised the issue of the landlord's son being a dentist and may live with the landlord after he takes over the rental unit, however she did not elaborate on how this would invalidate the notice that was served upon her. The landlord did not dispute that his son would come live with him after he takes possession of the rental unit.

Lastly, the tenant testified she had a verbal agreement from a property manager taking care of the landlord's property, renewing the tenancy to another fixed term for another year. That person was not called as a witness by the tenant and no documentary evidence regarding this agreement was provided as evidence.

Analysis

I find the tenant was served with the landlord's Two Month's Notice to End Tenancy for Landlord's Use on September 30, 2020 in accordance with sections 88 and 90 of the Act. She filed her application to dispute the notice on October 8, 2020, within the prescribed 15-day timeframe to do so.

Residential Tenancy Policy Guideline 2A: [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member] provides guidance for landlords and tenants to understand the requirements for ending a tenancy pursuant to section 49.

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit.

*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... 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. demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

The landlord has provided consistent testimony corroborated by documentary evidence to satisfy me of the following: he lost his job and his accommodations associated with that job in July of 2020. He pays rent to live in another rental unit while the one he owns is occupied by the tenant. It would be more economical for him to live in the unit he owns, rather than pay rent to his own landlord.

The tenant did not provide any testimony or documentary evidence to contradict the landlord's assertion that he would move into the rental unit with his spouse. The majority of the tenant's testimony related to her own personal financial situation, difficulty in obtaining mental health resources for her son and her struggles to find suitable housing.

While I can sympathize with the tenant, she has not raised any valid objection to the landlord's good faith in issuing the Two Month's Notice to End Tenancy for Landlord's Use. The issue of the landlord's son coming to live with him and his wife does not invalidate the reasons for ending the tenancy provided on the notice. As long as the landlord or a close family member occupies the unit after the landlord moves in, the purpose for ending the tenancy has been achieved. The second argument that the tenancy agreement was renewed for another fixed term in May of 2020 was not substantiated by any documentary evidence. Given the above factors, I find the landlord issued the Two Month's Notice to End Tenancy for Landlord's Use in good faith. I uphold the landlord's notice to end tenancy.

Section 55 of the *Act* states:

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.

I have reviewed the landlord's notice to end tenancy and I find it complies with section 52. As the landlord's notice to end tenancy was upheld, I issue the landlord an order of possession. The effective date stated on the notice to end tenancy has passed. The landlord is therefore entitled to an order of possession effective 2 days after service upon the tenant.

Pursuant to section 44(1)(a)(v), the tenancy ended pursuant to section 49 with the issuance of a landlord's Two Month's Notice to End Tenancy for Landlord's Use. As such, the tenant is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement in accordance with section 51(1) of the *Act*. Since this compensation was not sought in the tenant's application, I do not make an order regarding it however the parties are cautioned that section 51(1) applies to this tenancy.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 21, 2020

Residential Tenancy Branch