



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, CNL, RP, OLC, LRE, FFT**

Introduction

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

- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;
- An order for regular repairs pursuant to sections 32 and 62;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the landlord (FR) and the tenant 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 package and the tenant acknowledged service of the landlord's evidence. Both parties stated they had no issues with timely service of documents.

Preliminary Issues

In her application, the tenant misnamed the landlord FR by inverting his names and misspelling his given name. I amended the application in accordance with section 64(3) of the *Act*. The correct name of the landlord is recorded on the cover page of this decision.

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (“Rules”) allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord’s Two Month Notice to End Tenancy for Landlord’s Use was unrelated to the tenants’ other issues and I dismissed them at the commencement of the hearing.

Issue(s) to be Decided

Was the Two Month’s Notice to End Tenancy for Landlord’s Use issued in good faith?

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.

The landlord gave the following testimony. The registered owner of the rental unit is a holding company solely owned by himself. The landlord holds all voting shares in the company. A copy of the company search and land title certificate were provided as evidence.

The landlord’s three sons live with him in his family home, together with his elderly mother. All three sons are enrolled at the University of British Columbia. The university has transitioned from classroom and lecture halls to online-learning in light of the Covid-19 pandemic. The three boys no longer commute to university for their studies but are required to study at home. This will continue for the foreseeable future and the landlord provided information from the university’s website corroborating the same.

The rental unit, currently occupied by the tenant would be a good place for his sons to learn and study, away from the noise of daily family life. The basement unit is a quiet place, free from noise, and would be suitable for providing his sons with a place where they could study, physically rest and attend lectures at their leisure.

The landlord called his son, AR as a witness. The witness testified that he would move into the unit with his two brothers. He is currently living in the family home with his parents, siblings and grandmother but finds it difficult to study there. He is a student at UBC and with the pandemic induced lockdowns in libraries, coffee shops and public places to study, his ability to find quiet space is diminished. He has less freedom and he can't focus on his studies. He and his brothers need the privacy the basement suite would provide.

On September 30, 2020, the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use. Both parties submitted a copy of the notice. The effective date stated on the notice is November 30, 2020 and the reason for ending the tenancy states the rental unit will be occupied by the landlord or the landlord's close family member. The declared family member is the child of the landlord or the landlord's spouse.

The tenant gave the following testimony. She disputes the landlord's three sons will move into the basement suite she currently occupies. According to the tenant, there are three basement suites in the home she rents, the other two are unoccupied. The landlord could use one or both of the two empty ones. There is a history of tension between herself and the other named landlord in this application. They've tried to evict her once before but weren't successful. That's why they served her with this Two Month Notice to End Tenancy for Landlord's Use.

The tenant alleges the landlord is trying to harass and evict her for no reason. She's made multiple applications for dispute resolution regarding utilities but they were all dismissed without leave to reapply by previous arbitrators. The tenant stated she believes the landlord has an ulterior motive however she didn't elaborate this. The landlord is trying to evict her for no reason. Lastly, the tenant testified that comparable rental units at the same rent are not available in this rental market. It would be difficult for her to find suitable accommodations similar to this one at current market rates.

The landlord stated there is one other space in the house that he uses for storage and warehouse space for his business. He stores equipment used in his practice there. The space has never been used as living accommodations and there is no intent to ever use that space for living; his sons will not be accessing it. There is no third basement unit in the house as alleged by the tenant.

Analysis

The evidence shows the tenant was served with the landlord's notice to end tenancy on September 30, 2020. The tenant filed her Application for Dispute Resolution seeking to dispute the landlord's notice on October 14, 2020, fourteen days later. The tenant has filed her dispute within the 15 days as required by section 49 of the *Act*.

Ending a tenancy for occupancy by a landlord, purchaser or close family member is extensively explained in Residential Tenancy Branch Policy Guideline PG-2A. It states:

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

- 1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;*
- 2. is a family corporation and 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;*
- 3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.*

"Family corporation" means a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members.

In this matter, the landlord has provided testimony and sufficient documentary evidence to satisfy me that the landlord is a family corporation with a single owner, FR. The issue before me is whether FR has shown good faith when issuing the notice to end tenancy in order for his sons to occupy the rental unit.

Turning again to PG-2A:

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. 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.

Although the tenant has raised a concern about a possible ulterior motive for ending the tenancy, I find insufficient evidence to satisfy me this is the case. Despite providing evidence to show the landlord once tried to end the tenancy for cause; ending the tenancy for landlord's use constitutes a completely different objective. Other potential motives for ending the tenancy were not put forward as an argument by the tenant.

As directed by the policy guideline, the onus is on the landlord to prove he is acting honestly and truly intends on doing what he says he is going to do. I find the landlord has provided sufficient corroborative evidence to satisfy me this is the case. I find it reasonable that the landlord's sons cannot find a quiet place to conduct their studies, uninterrupted by distractions such as those present in an extended family home. I have considered the landlord's son's testimony that the Covid-19 pandemic has made library facilities and coffee shops less accessible to him and his brothers, further depriving them of space to quietly study in peace. Based on this evidence, I am satisfied the landlord truly intends on moving his sons into the rental unit to provide them with a quiet place to study.

Although the tenant has argued that there is space in the basement that the landlord could give to his sons to use as a living/study area, the evidence before me indicates the landlord has never used that space as living accommodations at any time. During the hearing, no corroborative evidence was provided from either the tenant or the landlord regarding the suitability of the other space in the home for occupation. As such, the tenant has not shown the "other" basement space is a comparable unit that

the landlord could give to his sons. Further, as the owner of the property, the landlord is under no obligation to repurpose parts of the property he is already using in order to accommodate the tenant in staying in the rental unit. Ultimately, if a landlord chooses to take back a rental unit so that his child or children can occupy it, he has the right to do so under section 49(4) of the *Act*.

I find the landlord's sons require the rental unit currently occupied by the tenant due to the restrictions on public places brought about by the covid-19 pandemic restrictions. The landlord has provided compelling evidence to satisfy me he truly intends to move his sons into the rental unit so that they have a peaceful place to do their studies while virtually attending university.

I find the landlord has shown that he intends in good faith to have his sons occupy it and I uphold the landlord's Two Month's Notice to End Tenancy for Landlord's Use. The tenant's application to cancel the notice is dismissed without leave to reapply.

Section 55 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 the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As this tenancy has ended, the remainder of the tenant's application is dismissed without leave to reapply.

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 tenant 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: January 07, 2021

Residential Tenancy Branch