



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 14, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated October 2, 2020;

The Tenant, the Tenant's Advocate L.H., the Landlord, the Landlord's interpreter V.L., and the Landlord's Counsel M.G. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?

2. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 5, 2011. The Tenant pays rent in the amount of \$968.91 to the Landlord on the third day of each month. The Tenant paid a security deposit in the amount of \$425.00 which the Landlord continues to hold.

The Landlord's Counsel submits that the Landlord served the Tenant in person with the Two Month Notice on October 2, 2020 with an effective vacancy date of December 2, 2020. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

“The rental unit will be occupied by the Landlord or the Landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).”

The Landlord Counsel referred to a Statutory Declaration which was produced by the Landlord in preparation for the hearing. In the document, the Landlord indicates in part, that he and his wife currently occupy the upper level of the home and that the Tenant occupies the basement rental unit of the home. The Landlord states that he is seeking to end the tenancy in order to reclaim the basement of the home for his own use. The Landlord states that he intends to establish a home office so that he does not have to commute to work everyday enabling him to work from home. The Landlord is seeking to construct a recreation room to entertain family and guests in, and for storage purposes as the Landlord does not have a garage and there is limited storage in the home. The Landlord further states that he is mortgage free and no longer requires the basement rental unit income.

In response, the Tenant's Advocate stated that the Landlord has served the Two Month Notice to the Tenant in bad faith. The Tenant's Advocate stated that Landlord has served the Tenant with 8 notices to end tenancy in the past 3 years. The Tenant's Advocate stated that parties had a dispute over parking, which appears to be the Landlord's motivating factor to end the tenancy. The Tenant's Advocate referred to previous Arbitrator decision in which the Landlord was unsuccessful in ending the tenancy. The most recent notice to end tenancy was dated January 19, 2019 for the purpose of renovating the rental unit for which the Landlord required vacant possession

of the rental unit. The Tenant's Advocate stated that the Landlord was unsuccessful with respect to ending the tenancy as the Tenant was willing to vacate temporarily to accommodate the renovations, therefore, it was found that the tenancy did not need to end.

The Tenant's Advocate stated that the Landlord has not performed any renovations as he had previously planned for, and now is seeking to end the tenancy for his own use of the rental unit. The Tenant's Advocate stated that this demonstrates that the Landlord had not intended to renovate the rental property, but rather is only seeking to end the tenancy to get the Tenant out.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlord stated that he intends to reclaim the basement rental unit of his home for his own use.

According to the Residential Policy Guideline **2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member;**

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.

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.

Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

The Landlord served the Tenant in person with the Two Month Notice on October 2, 2020 with an effective vacancy date of December 2, 2020. The Tenant confirmed having received the Two Month Notice on the same day. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on October 2, 2020 and filed the Application on October 14, 2020. Therefore, the Tenant is within the 15 day time limit under the *Act*.

I accept that the Landlord and his wife currently occupy the upper level of the home and that the Tenant occupies the basement rental unit of the home. I accept that the Landlord is seeking to end the tenancy in order to reclaim the basement of the home for his own use. The Landlord stated that he intends to establish a home office so that he does not have to commute to work everyday enabling him to work from home. The Landlord stated that he is seeking to construct a recreation room to entertain family and guests in, and for storage purposes as the Landlord does not have a garage and there is limited storage in the home.

I find that the Landlord is entitled under the Act to end a tenancy for the purpose of reclaiming the portion of the home that is currently being occupied by the Tenant. While the Tenant's Advocate stated that the Landlord is acting in bad faith, I find that the Landlord's previous attempts at ending the tenancy were for other reasons, unrelated to the Landlord's use of the rental unit. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord is attempting to avoid any obligations under the *Act*.

In contrast, I find that the Landlord has indicated valid reasons in support of position to reclaim the rental unit for his own use. As a result, I find that I am satisfied by the Landlord, on a balance of probabilities, that they have not served the Two Month Notice in bad faith.

I dismiss the Tenant's Application to cancel the Two Month Notice dated October 2, 2020 without leave to reapply. The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on February 2, 2021 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated October 2, 2020, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on **February 2, 2021 at 1:00PM**. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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 11, 2021

Residential Tenancy Branch