



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, LRE, FFT

Introduction

The hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on October 23, 2020 the Dispute Resolution package was served to the Landlord by registered mail. The Landlord acknowledged receiving these documents.

On October 15, 2020 and December 23, 2020, the Tenants submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was served to the Landlord, via registered mail, on December 21, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 11, 2021, the Tenants submitted evidence to the Residential Tenancy Branch. As this evidence was not submitted within the timelines established by the Residential Tenancy Branch Rules of Procedure, it was not accepted as evidence for these proceedings. This evidence is merely a copy of a decision from a dispute resolution proceeding on December 21, 2020.

The parties agree that there was a dispute resolution proceeding regarding this tenancy on December 21, 2020, at which time the Landlord's application for an Order of Possession on the basis of this Two Month Notice to End Tenancy for Landlord's Use

was dismissed, with leave to reapply. The parties agree that neither party attended the hearing on December 21, 2020.

The Agent for the Landlord stated that the Landlord submitted evidence for the hearing that was scheduled for December 21, 2020. She stated that the Landlord did not submit any evidence for this hearing, as he did not understand it was a separate dispute resolution proceeding. She stated that on December 24, 2020 the Residential Tenancy Branch advised the Landlord that he had missed the hearing for the Landlord's dispute resolution proceeding and that the Tenants' Application for Dispute Resolution would be considered at the hearing scheduled for January 11, 2020. On the basis of this information, I find that the Landlord had adequate time to submit 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 affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord stated that she is the Landlord's cousin and is assisting him in this matter, as English is not his first language.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants have identified issues in dispute on the Application for Dispute Resolution which are not sufficiently related to be determined during these proceedings.

At these proceedings I will consider the most urgent issue in dispute, which is the application to cancel the Two Month Notice to End Tenancy for Landlord's Use. I will also consider the application to recover the fee for filing the Application for Dispute Resolution.

The application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit is severed, with leave to re-apply.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside and are the Tenants entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenants agree that this tenancy began in 2016 and that rent is due by the first day of each month.

The Landlord and the Tenants agree that on October 02, 2020 the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use on the door of the rental unit, which declared that the unit must be vacated by January 01, 2021.

The Two Month Notice to End Tenancy for Landlord's Use, which was submitted in evidence, declares that the unit will be occupied by the landlord or a close family member of the landlord. Specifically, the Notice declares that the unit will be occupied by the Landlord or the Landlord's spouse. I note there is space on the Notice to declare if the unit will be occupied by the Landlord or the Landlord's parent, which is not checked on this Notice.

The Agent for the Landlord initially stated that the Two Month Notice to End Tenancy for Landlord's Use was served because the Landlord wished to use a portion of the rental unit to store the Landlord's personal property.

The Agent for the Landlord subsequently stated that the Two Month Notice to End Tenancy for Landlord's Use was served because the Landlord also wished to use a portion of the rental unit to store personal property belonging to the Landlord's parents.

The Agent for the Landlord subsequently stated that the Two Month Notice to End Tenancy for Landlord's Use was served because the Landlord's parents wished to move into the rental unit. She stated that the Landlord's parents are currently living next door to the rental unit and that they wish to move into this unit because:

- They will have more space in the rental unit; and
- Moving into the unit will enable their grandchildren to walk to school from their unit.

The Agent for the Tenant stated that:

- The Landlord appears to be unclear about what he wants to use the rental unit for, as the initial testimony was that it would be for storage;
- The testimony that the parents will move into the unit is inconsistent with the information provided on the Two Month Notice to End Tenancy for Landlord's Use, which declares that the Landlord or his spouse will move into the unit;
- The Landlord owns 3 houses, one of which is next door and the other is a large house a few blocks away;
- As the Landlord owns 3 houses, there is ample space for his parents to live;
- He believes the Two Month Notice to End Tenancy for Landlord's Use was served in retaliation for a letter, dated October 01, 2020, which was personally served to the Landlord's daughter on October 01, 2020;
- The letter dated October 01, 2020, which was submitted in evidence, outlines various issues with the tenancy;
- On October 04, 2020 he received a telephone call from an individual identifying themselves as the Landlord, whom he believes was the Landlord's wife;
- In that telephone conversation they discussed the content of the October 02, 2020 letter and the other party declared that she wanted the Tenants to move out;
- He is a poverty law advocate with no personal relationship with the Tenants; and
- He believes the Landlord has demonstrated several reasons they want to evict the Tenants, which are unrelated to the Two Month Notice to End Tenancy for Landlord's Use.

The Agent for the Landlord stated that:

- The Landlord did not receive the letter dated October 01, 2020 until it was served to the Landlord as evidence for these proceedings;
- The Tenants were rented a two bedroom unit and are currently occupying more space than they are entitled to occupy;
- The Tenants removed personal property belonging to the Landlord in order to occupy spaces they are not entitled to occupy;
- The Landlord intends to use the spaces the Tenant is not entitled to occupy for storage and the parents will live in the rental unit; and
- The Tenant has erected a shed in the back yard.

The Tenant initially denied moving any of the Landlord's personal property or occupying any additional space. The Tenant subsequently agreed that he is using a space under the sundeck and that he moved some property belonging to the Landlord from this

area. He describes this space as a small car garaged without a door and the Agent for the Tenant describes it as an enclosed room with a door.

The Tenant stated that he erected an outdoor awning in the back yard to cover his barbecue.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. When a Landlord wishes to end a tenancy pursuant to section 49(3) of the Act, the Landlord bears the burden of proving the Landlord or a close family member intends in good faith to occupy the unit.

I find that the Landlord has failed to meet the burden of proving that he or a close family member intends to occupy the unit. In reaching this conclusion I was heavily influenced by the inconsistent evidence provided by the Landlord. On the Two Month Notice to End Tenancy for Landlord's Use the Landlord specifically declared that the unit would be occupied by the Landlord or his spouse. At the hearing the Agent for the Tenant testified that the unit would be occupied by the Landlord's parents. I find this inconsistency places significant doubt on the Landlord's true intent.

In determining that the Landlord has failed to meet the burden of proving that he or a close family member intends to occupy the unit, I was influenced by my determination that the Landlord's submission regarding his parents' motive for moving into the unit lacks credibility. The Landlord submits that one of the reasons his parents wish to move into the rental unit is so that their grandchildren can walk to school from this unit. Given that the grandparents are currently living next door to the rental unit, this alleged reason for moving is illogical.

In determining that the Landlord has failed to meet the burden of proving that he or a close family member intends to occupy the unit, I was further influenced by the lack of any corroborating evidence, such as testimony or an affidavit from the parents, that supports his submission that the parents will be moving into the unit.

In addition to supporting the testimony that the Landlord's parents will be moving into the unit the Landlord bears the burden of providing 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/or they are not trying to avoid obligations under the Act or the tenancy agreement.

I favour the testimony of the Agent for the Tenant, who stated that he personally delivered a letter, dated October 01, 2020, to the Landlord's daughter on October 01, 2020, over the testimony of the Agent for the Landlord, who stated that the Landlord did not receive this letter until it was served to him as evidence for these proceedings.

I favour the testimony of the Agent for the Tenant in regard to service of the October 01, 2020 letter, in part, because he is a poverty law advocate with no personal relationship with the Tenants. As such, I find him to be a relatively unbiased party who would be less motivated to misrepresent the facts. Conversely, it could be seen as self-serving for the Landlord to deny receipt of this letter.

I favour the testimony of the Agent for the Tenant in regard to service of the October 01, 2020 letter, in part, because on October 04, 2020 he had a telephone conversation with the Landlord or someone representing him. I find his testimony in this regard was consistent and I can find no reason to doubt this reasonably unbiased party. I find that this testimony supports a conclusion that the letter was received by the Landlord or an agent for him.

I favour the testimony of the Agent for the Tenant in regard to service of the October 01, 2020 letter, in large part, because the letter was served to the Landlord, in part, for the purpose of informing him that the Tenants would not be paying a rent increase that had been imposed by the Landlord. As service of the letter directly benefitted the Tenants, I can see no logical reason why they would not have served the letter. Conversely, denying receipt of this letter is in the Landlord's best interest, as the letter could then not be relied upon when considering the issue of good faith.

As I have concluded that the Landlord was served with the October 01, 2020 letter on October 01, 2020, I find that this Two Month Notice to End Tenancy for Landlord's Use

was served on the day after the Landlord received the letter. I find the timing of service of the letter strongly suggests that the Notice to End Tenancy was served in retaliation for the issues outlined in the letter of October 02, 2020, which suggests the Notice was not served in good faith.

On the basis of the testimony provided at the hearing, it is evident that the Landlord believes the Tenants are using space in the residential complex that is not included in their tenancy. It is equally evidence that the Landlord is disturbed by his belief that the Tenants are using space that is not included in their tenancy. I do not need to determine whether the Tenants are using space to which they are not entitled, as that is not an issue in dispute at these proceedings. The fact the Landlord raised this issue at these proceedings and is clearly bothered by it, suggests that there is an ulterior motive for ending the tenancy and that the Two Month Notice to End Tenancy for Landlord's Use was not served in good faith.

As the Landlord has submitted insufficient evidence to establish that his parents intend, in good faith, to occupy the rental unit, I grant the Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use is set aside and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants are authorized to reduce one month's rent by \$100.00 in full compensation for the fee paid to file this Application for Dispute Resolution.

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: January 11, 2021

Residential Tenancy Branch