



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on November 6, 2020. The tenant provided undisputed affirmed testimony that the landlord was served via Canada Post Registered Mail with the submitted documentary evidence on January 5, 2021. The tenant stated a recent check on the online tracking system shows that the package is being returned to the sender after 2 attempted service(s) were made. The landlord stated that no such package was received as the landlord has been out of the country resolving a property damage issue. The landlord confirmed that no documentary evidence was submitted. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package. I also find that the landlord is deemed served as per section 90 of the Act with the tenant's submitted documentary evidence despite not actually receiving the package.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month notice?
Is the tenant entitled to recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with a 2 month notice to end tenancy for landlord's use of property on October 20, 2020 posted to the rental unit door. The stated effective end of tenancy date is January 1, 2021 and the reason listed 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 notice also states:

The landlord or the landlord's spouse will occupy the unit.

The tenant's copy of the submitted 2 month notice fails to disclose any landlord details or contact information. The landlord stated that the copy before the landlord did have the landlord's details listed. No explanation was provided for this missing information on the notice. Discussions on this revealed that there were no issues preventing the tenant from properly filing a dispute against the landlord's notice. The hearing proceeded as no issues were identified preventing the tenant from proceeding against the 2 month notice.

The tenant argued that the landlord's "good faith" is in question due to a previous dispute resolution decision dated August 12, 2020 (RTB File No. noted on the cover of this decision). The tenant stated in that notice the landlord's reasons for cause for significantly interfering with or unreasonably disturbing another occupant or the landlord and/or seriously jeopardized the health, or safety or a lawful right of the landlord. The tenant stated that in that decision the landlord's notice to end tenancy for cause was cancelled. The tenant argued that the landlord is motivated to evict her due to a poor relationship between the two parties. The tenant stated that the landlord's current home is not listed for sale and has a home to live in.

The landlord argued that the landlord's home has been rented for January 1, 2021 and that the landlord is currently out of the country dealing with an unexpected emergency property damage issue. The landlord stated that she is currently unable to travel back to Canada as she waits for an air flight to be scheduled due to Covid. The landlord

stated that her home was rented in the summer of 2020 (sometime in June or July) for a tenancy to begin on January 1, 2021. The landlord issued the Notice to End Tenancy for Landlord's Use dated October 20, 2020 by posting it to the rental unit door on October 20, 2020 expecting that she could occupy the rental unit when her new tenants took possession of her home. The landlord admitted that the tenant does not get along with the landlord, but that there is no ulterior motive. The landlord stated that she is acting in good faith.

Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, I accept the affirmed evidence of both parties and find that the tenant was properly served with the 2 month notice dated October 20, 2020 and that both parties agree that there are no issues regarding the notice itself.

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 filed her application for dispute on November 2, 2020, 13 days after service of the notice. The tenant has argued that the landlord is not acting in good faith by issuing this 2 month notice and has referenced a previous dispute resolution hearing in which a 1 month notice to end tenancy was issued. A review of that decision shows that the landlord failed to provide sufficient evidence for cause and the notice was cancelled and the tenancy continued.

Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, B. Good Faith states 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 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.

[reproduced as written]

The landlord has relied solely on her direct testimony and that of her agent. Despite arguing that she will in good faith occupy the rental unit, the landlord has failed to provide any supporting evidence of a new tenancy for her existing home. I note that the tenant provided evidence of a previous dispute resolution hearing in which the landlord issued a 1 month notice for cause on June 30, 2020. I must note that this is in the middle of the time period in which the landlord has stated that she rented her home out for January 1, 2021. The landlord provided testimony that her home was rented out in June/July of 2020. That 1 month notice for cause was set aside and cancelled.

In this case, I find that the landlord while she has provided a reasonable explanation that she will be occupying the rental unit, I find that “good faith” is in question based upon her prior acts concerning the 1 month notice. This has led to more questions than answers. I also note that the time period in which the landlord stated that a new tenancy was to begin for her home was made shortly after the issuance of that notice to end tenancy for cause and its dispute. As such, I find that the landlord has failed to provide sufficient evidence that she is in good faith intending to occupy the rental unit.

On this basis, the tenant's application is granted, the 2 month notice dated October 20, 2020 is set aside and cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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 27, 2021

Residential Tenancy Branch