



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 10, 2020, wherein the Tenant sought to cancel a 2 Month Notice to End tenancy for Landlord's Use, issued on October 25, 2020 (the "Notice") as well as an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation* (the "Regulation"), and/or the residential tenancy agreement.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on February 2, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both parties were also assisted by agents.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Act*, the *Regulation*, and/or the residential tenancy agreement?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified that this tenancy began January 1, 2018. Monthly rent is \$800.00 per month.

The Landlord confirmed that he served the Notice by taping it to the rental unit door.

The Landlord stated that he is 72 years old and is trying to retire as a tailor. He has had his business for sale for some time, but due to COVID-19 has yet to sell the business. He confirmed that he issued the Notice because he wants to use the rental unit for storing his business items, to create a hobby room, and to use the space for his family as a television room.

The Landlord testified that he and his wife live upstairs in a two-bedroom unit. His granddaughter also comes to stay regularly and she has the other bedroom. The Landlord stated that the rental unit includes a small living room and small bedroom. There is another living space downstairs which is part of the main house and which is occupied by the Landlord's daughter, R.N.

Both parties submitted evidence relating to conflict at the rental unit. The Landlord stated that the conflict began in March of 2020, and has increased since they gave the Tenant the Notice, as the Tenant has been more aggressive. He stated that the Tenant has been using foul language with him, his daughters and the other K, a tenant in a separate unit in the basement.

The Landlord's witnesses, who are his daughters, were available to provide evidence related to the conflict between the Tenant, the Landlord's daughters and K. As the Notice related to the Landlord's request to use the rental unit for his own purposes, and not for cause, I did not hear from the Landlord's daughters.

In response, the Tenant stated that he rents a unit, and another tenant, K., rents another unit in the basement. The Tenant stated that the Landlord's daughter, R.N.,

also lives in the basement, which he believes is a part of the upper unit. The Tenant stated that he and K. have had considerable conflict. The Tenant stated that this has been going on ever since he moved in.

The Tenant alleged the Landlord did not issue the Notice in good faith as he just wants the Tenant to move out as the Tenant has raised issues with the Landlord about not respecting the Tenant's rights.

The Tenant stated that it has "escalated extremely" since he lost his job in February 2020 and he and his girlfriend separated. He claimed the Landlord told him that he was not allowed to have anyone overnight, that his guests were not able to park in his spot, and that he was not able to use the back yard or enter the rental unit from the back. The Tenant stated that his guests already park in the alley, and he is not going to walk around the block to access the rental unit. The Tenant also stated that the Landlord will not let his guests park in his parking spot and the Landlord does not let him access the garbage and recycling areas.

The Tenant confirmed that in the two years he has lived at the rental unit he used the back yard to access the unit as he parked his work vehicle in the alley on occasion.

The Tenant stated that he told the Landlords to call the tenancy branch to get information about their unreasonable restrictions as well as how to deal with K.

In reply the Landlord stated that he never told the Tenant he could not have overnight guests, nor did he tell the Tenant he could not access the rental unit through the backyard. The Landlord stated the police told the Tenant and K. to stay away from each other and for the Tenant not to go through the back yard. The Landlord also stated that the Tenant does not have a vehicle and hasn't for about a year. Finally, the Landlord said that he never told the Tenant he could not access the garbage and recycling areas.

Analysis

The Landlord issued the Notice pursuant to section 49(3) which reads as follows:

(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, the Landlord testified that he is 72 years old and is retiring from his business as a tailor. He stated that he wants to reclaim the rental unit as part of the main house and to use it as a hobby room, a place to store his business items, as well as a space for a chesterfield and television. He testified that due to COVID-19 his sales have dropped dramatically and he has been trying to sell his business for some time. A copy of the Multiple Listing Contract for the real estate associated with his business was provided in evidence and which confirmed that the property has been listed for sale since July of 2020. While this contract was heavily redacted it confirmed the reason for the sale was that the owner was retiring after 40 years in the business. The Landlord also provided photos of the items he intends to store in the rental unit, including thread, material and sewing machines.

The Tenant alleges the Landlord did not issue the Notice in good faith as the real reason he wishes to end the tenancy is because the Tenant has raised concerns about the Landlord not respecting his rights as a tenant. He stated that the Landlord has tried to restrict his overnight guests as well as access to common areas. This was denied by the Landlord.

The evidence confirms there has been conflict in this tenancy. The Tenant testified that it has been ongoing since he moved in, and that it has escalated since he lost his job in early 2020. The Tenant provided handwritten notes which appear to be a combination of a chronology of the conflict between the Tenant and K, as well as letters written to the Landlord. The contents of these notes mirror the Tenant's testimony in this regard and speak to the conflict the Tenant has with the other tenant in the suite downstairs as well as the Landlord's daughter. The Landlord testified that the conflict started in March of 2020 but worsened after he issued the Notice. The Landlord also provided evidence regarding this conflict.

As noted in section 49(3), a Landlord must intend in *good faith* to occupy the rental unit. Guidance can be found in *Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member*

B. 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.

The Landlord testified that he had no intentions to re-rent the unit, but to use it as part of his home. He stated that he will use the space for storage, a hobby room as well as a place to watch television now that he is retired. While there is another unit in the rental unit, it is also tenanted.

In terms of whether the Landlord intends to *occupy* the rental unit, *Guideline 2A* provides the following additional guidance:

C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). 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. Vacant possession Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this

obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

After consideration of the testimony and evidence before me, I find the Landlord intends in good faith to use the rental unit as part of his living space. I am satisfied he intends to convert the space to a hobby room and living space for watching television. I accept his testimony that he lives upstairs with his wife and his granddaughter who stays with them frequently. I further accept his testimony that after forty years of working outside the home he wants to retire and is selling his business. It is not surprising the Landlord is hoping to have some part of his home for himself after working away from the home for so many years.

While there is clearly conflict in this tenancy, I am not satisfied this is evidence of an ulterior motive on the Landlord's part. Given the level of conflict between the Tenant and K, it would be understandable if the Landlord no longer wanted to deal with either tenant, however, there was no evidence before me that the Landlord intends to re-rent the unit to others or that he has any other intention but to use the rental unit space as part of his home. I am satisfied the Landlord wishes to occupy the rental unit and will use the rental unit as a living space as indicated on the Notice.

I therefore dismiss the Tenant's claim for an Order canceling the Notice. The tenancy shall end in accordance with the Notice.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. As such, and pursuant to section 55, the Landlord is entitled to an Order of Possession. The Order will be effective 1:00 p.m. on February 28, 2021. This Order must be served on the Tenant and may be filed and enforce in the B.C. Supreme Court.

The Landlord is reminded that if he does not use the rental unit for the stated purpose the Tenant is at liberty to apply for monetary compensation pursuant to section 51(2) of the *Act*.

As the tenancy is ending, the Tenant's request for an Order that the Landlord comply with the *Act*, the *Regulations*, and/or the residential tenancy agreement is of limited applicability. I therefore decline to make any Orders in this respect but remind the Landlord of the following.

Section 9 of the Schedule to the *Residential Tenancy Regulation* reads as follows:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Additionally, the Landlord is reminded that he may not restrict a Tenant's right to access common areas as the Tenant retains this right pursuant to section 28 of the *Act* which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Should the Tenant believe the Landlord has breached his right to quiet enjoyment he is at liberty to apply for monetary compensation for any devaluation in his tenancy.

Conclusion

The Tenant's request to cancel the Notice is dismissed.

The Landlord is entitled to an Order of Possession effective 1:00 p.m. on February 28, 2021. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme 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: February 03, 2021

Residential Tenancy Branch