



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, MNDCT**

Introduction

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

- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

At the outset of the hearing the parties agreed that the individual who attended the hearing is the purchaser and the current registered owner of the rental property and the appropriate party to be named as respondent. The parties submit that the respondent named in the application was the seller of the rental property and should be removed from the proceedings. Based on the undisputed evidence of both parties and in accordance with Residential Rule of Procedure 7.13 I add the respondent RH (the "landlord") as a party replacing the initial named respondent and the style of cause is amended accordingly.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a monetary award?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This parties agree on the following facts. This periodic tenancy began in 2017. The current monthly rent is \$1,300.00 payable on the first of each month. The rental unit is a detached single-family home.

The landlord's spouse entered into an agreement to purchase the rental property from its former owners (the "Seller"). The sale was closed on December 15, 2020. A copy of the Contract of Purchase and Sale was submitted into evidence. The conditions for the sale include the following terms:

Subject to the Buyer, on or before September 3, 2020 conducting and approving of a Feasibility Study in regards to the development potential of the Subject Property.

The Seller will give legal notice to the Tenant to vacate the premise, but only if the Seller receives the appropriate written request from the Buyer to give such notice in accordance with the requirements of section 49 of the Residential Tenancy Act.

The Seller served the tenant with a 2 Month Notice dated October 30, 2020 with an effective date of December 31, 2020. The reason provided on the notice for the tenancy to end is that:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because*

the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord testified that they intend to occupy the rental unit with their spouse. The landlord said that they are presently residing with relatives in the area and waiting to obtain vacant possession. The landlord submits that they have not applied for nor received any permits to demolish or perform work on the rental unit and intend to perform any repairs or maintenance work while residing in the unit. The landlord said that they have attempted to accommodate the tenant by exploring the possibility of extending the tenancy to allow them to find alternate residence but have not waived their right to obtain an Order of Possession.

The tenant disbelieves the landlord and submits that they doubt their good faith intention to occupy the rental unit. The tenant testified that they have been told by agents of the Seller and the landlord that they believe the rental unit will be demolished for the purposes of erecting a new building. The tenant submits that the rental unit is in a state of disrepair requiring considerable work to be done and doubts that the landlord will occupy the rental unit. The tenant submitted into evidence photographs of the rental property as well as copies of correspondence with the landlord where they discuss extending the present tenancy for some months to ease the process of moving.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlord intends in good faith to have the rental unit occupied by the landlord or a close family member.

The tenant questions the intention of the landlord and raises a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith

requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Policy Guideline 2 reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has little merit. I find the landlord's conduct, timeline of events and circumstances to support the landlord's good faith intention to occupy the rental unit with no ulterior motive. I find the landlord's explanation to be consistent, cogent and reasonable.

I find their explanation that they purchased the rental property with the intention to occupy it as their family home to be reasonable and believable. I accept their evidence that they intend to occupy the rental unit while performing whatever repairs or maintenance is necessary. I find that the landlord has been forthright and consistent regarding their intention throughout the correspondence with the tenant. While the landlord was willing to accommodate the tenant by delaying the date when the tenant must move out, it is clear that this was simply an extension and not a situation where they waived their right to obtain possession of the property.

I find the landlord's explanation that they commissioned a feasibility study of the property as part of their due diligence but always intended to occupy the rental unit to be consistent with what a reasonable person would do under the circumstances. I accept the landlord's submission that they have not given instructions to their realtor that they will not occupy the rental unit and that they are unaware of any such statements. In any event, I find the hearsay evidence of the tenant to be of little value in establishing the intention of the landlord.

I find that within the correspondence between the parties the landlord repeatedly reiterate their intention to occupy the rental unit as their primary residence, that they are eager for their residence to begin and conduct themselves in accordance with their stated intention. I find the landlord's testimony and documentary materials to be sufficient evidence of their good faith intention to occupy the rental unit as their primary residence.

I do not find the tenant's submission that they have been told by third parties that the landlord does not intend to occupy the rental unit to be supported in the materials or have an air of reality. I do not find the tenant's suggestion that the rental unit to be unfit for habitation to be consistent with their own current occupation of the property. While I accept that some work may be required on the rental unit, I find that this would not preclude the landlord from occupying the rental property while performing maintenance and repairs.

I further note that at no point in the correspondence between the parties is the 2 Month Notice rescinded or cancelled to be replaced with a new agreement. While the parties discuss extending the effective date of the notice, they continue to make reference to the tenant's right to compensation in the amount equivalent to one month's rent pursuant to section 51 of the *Act*. Compensation would only be required where there is an effective 2 Month Notice. Based on the contents of the discussion I find that the 2 Month Notice was not withdrawn or cancelled but remained in effect and both parties understood that to be the case. I find that the parties did not enter into a binding agreement to cancel the Notice or to extend the effective date of the Notice. Taken in its entirety, I find that the discussion between the parties did not waive the landlord's right to seek an order of possession.

I find that the landlord has provided sufficient evidence to support their intended use of the property. I find that the landlord's testimony and documentary evidence demonstrate the good faith intention of the landlord. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed.

Therefore, I dismiss the tenant's application to cancel the landlord's 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

55 (1) 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

(a) the landlord's notice to end tenancy complies with section 52..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the Act, as it is in the prescribed form, is signed and dated by the Seller, identifies the address of the rental unit and provides the reason for the tenancy to end.

Based on the totality of the evidence I am satisfied that the landlord in good faith intends to occupy the rental unit and has made a written request to the Seller to issue the 2 Month Notice.

Consequently, I issue an Order of Possession in the landlord's favour. As the effective date of the 2 Month Notice has passed I issue an Order effective 2 days after service.

I find the tenant has provided little evidence or submissions in support of the other portions of their claim. The tenant failed to articulate what portions of the Act, regulations or tenancy agreement has been breached by the landlord and seems to be suggesting that they feel the documentary materials are deficient. As stated above, I am satisfied that the 2 Month Notice complies with the form and content requirements of the Act and find no breach requiring an order. I therefore dismiss this portion of the tenant's application.

The tenant claims a monetary award in the amount of \$100.00 for the cost of filing the present application. The application history indicates that the tenant has not paid any amount as the filing fees were waived. As the tenant has failed to demonstrate any losses I dismiss this portion of the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of 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: February 5, 2021

Residential Tenancy Branch