



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, RP, CNL, OLC**

Introduction

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

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order for regular repairs pursuant to sections 32 and 62;
- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both the tenant and the landlord attended the hearing. The landlord was assisted by a friend, GP who attended in the capacity of a person there to explain what was being said to the landlord whose English is poor. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings and amendment. The landlord stated he had no concerns with timely service of documents. The tenant did not acknowledge service of the landlord's evidence however when the landlord's evidence was described to him, he acknowledged having each document in his possession. I advised the parties that they could object to the entry of any documents referred to that they did not have in their own possession.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I determined that the primary issue before me would be whether the landlord's notice to end tenancy would be upheld or cancelled. The issue of regular

repairs and an order for the landlord to comply were unrelated and they were dismissed with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Should the landlord's Two Month's Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence by both parties. The tenancy began on May 1, 2015 with rent set at \$900.00 per month payable on the first day of each month. A security deposit of \$450.00 was collected by the landlord which he continues to hold.

The landlord testified that on January 1, 2021, he personally served the tenant with the Two Month's Notice to End Tenancy for Landlord's Use (the "Notice"). A copy of the Notice was provided as evidence. It is dated December 22, 2020 and provides an effective date of March 1, 2021. The reason for the Notice is as follows:

The rental unit will be occupied by the landlord or the landlord's close family member. The indicated close family member is the child of the landlord.

The landlord testified that the rental unit is one of two houses erected on the residential property, a large blueberry farm with several acres of blueberries. The landlord testified the tenant complains a lot about the unit needing repairs, the landlord's children and noise from the landlord's tractors. The landlord argues that the tenancy agreement signed with the tenant in 2015 states that the tenant is to do the repairs to the house and that the tenant has not done repairs the proper way. The landlord alleges the "cheap" rent is unjustified. This is not the reason for ending the tenancy – it is because his son needs the house.

The landlord argues that the tenant agreed last year that he would move out in a year. The plans for his son to move in are now delayed. The landlord testified that his son is 36 years old, married with 2 children. The landlord also has another son. Both sons and their families live in the landlord's house, also located on the residential property. In total, 10 people live in this house. The landlord needs to give the house currently occupied by the tenant to his son.

The landlord acknowledges there is another house located on the land across the street which the landlord also owns. The landlord acknowledges he recently rented this house

out to a friend in December of 2020. This house was not suitable for the son to live in because it is small and because the son's children could be hurt by traffic in crossing the street to the main house.

In evidence, landlord produced 2 letters, dated June 2, 2020 and December 27, 2020 given to the tenant.

The tenant gave the following testimony. The landlord verbally told him in early December that the landlord was planning on moving migrant farm workers into the house in March or April.

When he served the landlord with the original Application for Dispute Resolution for repairs on December 19th, the landlord called him, yelling and screaming. The next day, the landlord cut off the tenant's city water supply. On January 1st, the tenant gave the landlord his rent cheque. The landlord personally served him with 2 days later with the Two Month's Notice to End Tenancy for Landlord's Use on January 3rd.

The landlord told him that if the tenant would "drop" the repairs application, he would "drop" the notice to end tenancy. The tenant did not provide documentary evidence to corroborate this.

The tenant testified that he is aware that the landlord owns 3 or 4 properties, including 3 trailers on this blueberry farm. One of the properties was recently vacated and re-rented on December 31, 2020. Any of those properties owned by the landlord would be suitable for the landlord's son. When he first moved in, the rental unit house was uninhabitable with no bathroom or kitchen cupboards. The tenant has spent \$4,000.00 of his own money fixing it up. The state of the house is still bad, suffering from mold in the basement, garage and ceiling. The tenant questions why this house would be more suitable for the landlord's son to live in than the one owned by the landlord directly across the street.

Analysis

According to the records at the Residential Tenancy Branch, the tenant filed his amendment to dispute the landlord's notice to end tenancy on January 8, 2021. This is within 15 days of being served with the Two Month Notice to End Tenancy in either scenario where the tenant was served on the 1st or 3rd of January.

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord intends, in good faith, to occupy the rental unit, or a close family member

intends, in good faith, to occupy the unit. In this case, the close family member identified in the landlord's notice is the landlord's child, his son and his son's family.

Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member is discussed in Residential Tenancy Branch Policy Guideline PG-2A. In PG-2A, the issue of good faith in ending the tenancy is explored at part B:

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 tenant has raised the issue of good faith in the landlord's issuance of the notice to end tenancy. The tenant argues that the landlord served him with the notice in order for the landlord to "drop" his application seeking repairs of the rental unit. Further, the tenant has raised the issue of the landlord seeking to use the rental unit to house migrant farm workers. Lastly, the tenant raised the issue of the landlord owning other

properties, as close as across the street from his own house, suitable for occupancy by the landlord's son.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that when a tenant files an application to dispute a landlord's notice to end tenancy, the landlord bears the onus to prove the reasons for ending the tenancy are valid. Therefore, each of the tenant's questions of good faith require an adequate response from the landlord.

I find the timing of the landlord's notice to end tenancy within days of being served with the tenant's Application for Dispute Resolution appears on its surface to be noteworthy. I have read the letters sent to the tenant on June 2, 2020 and December 27, 2020. The June letter makes no reference to the any agreement for the tenant to move out the following year, or the intention for the son to move in. It appears to focus on how much the tenant "stresses" the landlord by complaining about rats, repairs, rent and noise.

Conversely, the letter given on December 27, 2020 appears to be the first indication in writing that the landlord wants the house for his son. This letter was drafted after the date the tenant testified the Application for Dispute Resolution was served upon the landlord.

Next, the tenant has raised the issue of migrant farm workers needing the house. I find the tenant has not provided sufficient evidence to substantiate this allegation.

The last question of "good faith" questions the landlord's choice to evict the tenant rather than move his son into another house owned by the landlord across the street. The landlord gave various reasons as to why this "other" house was unsuitable, however I do not find any of those reasons to be reasonable. I have heard testimony from both parties that the rental property is located on a rural farm which is most likely free of traffic. I do not find the landlord's reasoning that traffic could harm the landlord's grandchildren while playing to be a likely scenario.

I find it equally compelling that the landlord chose to rent the other house out at exactly the same time he served this tenant with a notice to end tenancy. This was a vacant house, right across the street from the landlord's, suitable enough to be tenanted. Though I have not seen pictures of the "other" house, it must have been deemed in good enough condition for another tenant to agree to rent out. Conversely, the rental property currently occupied by the tenant appears to suffer from widespread mold damage. How the tenant's rental unit is more suitable for the landlord's son and his family instead of the one across the street is rightfully questionable.

Lastly, in order for the landlord to satisfy me his son truly intends to move into the rental unit with his family, the landlord must provide some verifiable proof. Again, the onus falls to the landlord to prove it, not for the tenant to disprove it. The landlord has not provided any evidence of booking movers to facilitate the move; changing of utility bills from one location to another; or even a sworn affidavit or written statement from his son whom he says is going to move in. Most importantly, the son was never called as a witness to give affirmed testimony.

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)).

I find the landlord was not acting honestly when serving the notice to end tenancy. I find the landlord had an ulterior motive of trying to avoid the obligation to maintain the rental unit and make it suitable for occupation. For these reasons, I find the landlord's Two Month's Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect.

The landlord acknowledged that he did not compensate the tenant with the equivalent of one month's rent when he served the tenant with the Two Month's Notice to End Tenancy for Landlord's Use. Section 51(1) requires the landlord to compensate the tenant on or before the effective date on the notice. As the notice was cancelled, there is no effective date and the landlord is therefore no longer obligated to compensate the tenant.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant is to deduct \$100.00 from one future rent payment owed to the landlord.

Conclusion

The Two Month's Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect.

The tenancy shall continue until it ends in accordance with the *Act*.

The tenant's application seeking repairs to be made to the unit and for the landlord to comply with the *Act* is dismissed with leave to reapply.

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 25, 2021

Residential Tenancy Branch