



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX OF NANAIMO and
[tenant name supprd to protect privacy]

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

JW gave the following testimony on behalf of the tenants. JW testified that she had heard rumours that the son would be moving into the property, but later heard it was going to be a nephew and then heard another version that the property was going to be renovated. JW testified that she would have moved out willingly if she felt that the owner's son was acting in good faith but based on the differing versions, she doesn't believe he is. JW testified that she would like to work with the owner's son and either negotiate a way to stay or at least extend the end of the tenancy. DC testified that he is

challenging the will of his late father and doesn't believe his brother will be moving into this property.

GL gave the following testimony on behalf of the landlord as his agent and representative. GL testified that his client is the son of the owner who recently passed away. GL testified that his client is the executor and trustee of the estate and as such issued a Two Month Notice to End Tenancy for Landlords Use of Property on February 22, 2021 with an effective date of April 30, 2021. GL testified that the owner's son is planning to move into the home on May 1, 2021. GL testified that the owner's son often does general contracting work on the island and this will help logistically as well financially for him to expand his business.

GL testified that the tenant is relying on rumours and heresy of parties that have no knowledge of the facts. GL testified that DC; the deceased owners' other son, has participated in this hearing on behalf of the tenants because he was not included in the will. GL testified that his client issued the notice in good faith and wants to move in on May 1, 2021 and requests an order of possession.

Analysis

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 tenant's claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

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.

*This might be documented through:
a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or*

a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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 landlords' agent gave clear concise and credible testimony. He provided details as to the logistical and financial benefits for his client to move into the subject unit. The agent provided documentation to reflect that his client is the trustee and executor of the estate, as such; I am satisfied that he is the executor and trustee of the estate and was entitled to issue the notice to end tenancy. Although the tenants submit that he is not the executor or trustee of the estate, they have failed to provide sufficient documentation as of this hearing date to reflect that.

Based on the above, and on a balance of probabilities, I find that the landlord (executor and trustee) has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated. The Notice issued on February 22, 2021 with an effective date of April 30, 2021 remains in full effect and force.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

The tenant's application is dismissed in its entirety without 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: March 25, 2021

Residential Tenancy Branch