



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC**
 CNR

Introduction

This hearing dealt with two applications filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for:

An order to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to section 49;

An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and

An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s two applications and stated he had no concerns with timely service of documents. The tenant acknowledged she was in possession of the landlord’s evidence that she received in relation to a hearing that took place on February 23, 2021. The landlord testified that, other than the evidence provided to the tenant for the previous hearing, no additional evidence was submitted for this hearing. This hearing proceeded as scheduled and no evidence was excluded.

Preliminary Issue

The parties agree that the tenant paid the outstanding arrears within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the e-transfer was provided as evidence by the tenant. At the beginning of the hearing, I cancelled the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as it had no force or effect.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to satisfy me that he intends to use the property for the stated purpose?

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

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of tenancy agreement was provided as evidence. The tenancy began on June 15, 2017, originally fixed term becoming month to month after the first year. Rent was set at \$1,200.00 per month, payable on the fifteenth day of each month. A security deposit of \$600.00 was collected from the tenant which the landlord continues to hold.

The landlord provided the following testimony. The rental unit is a lower unit in a house with an upper and lower unit. The lower unit is located in a back corner of the house with a separate entrance and an entrance from the house.

On December 11, 2020, the landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use (the "Notice") by taping it to the tenant's door. A copy of the Notice was provided as evidence. The reason for ending the tenancy provided on the notice states:

- The rental unit will be occupied by the landlord or the landlords close family member. The indicated close family member is the landlord or the landlord's spouse.

The landlord testified that he is a builder by trade and his business is growing. Secondly, his children are now conducting their schooling virtually online and require additional space to do their studying. When the landlord built this house four years ago, he was busy but now the landlord finds his company is growing and he describes his business as "insanely busy". The landlord testified that although he doesn't do any construction or building in the house, he requires the suite as office space to have clients come over and have their homes designed by him. The secondary reason for

needing the suite back is so that his children, aged 5 and 7 can have a space for their online learning.

To corroborate his testimony, the landlord turns to the text messages sent between himself and the tenant whereby he advises the tenant multiple times that the reason he wants to reclaim the rental unit is because he and his family need it for online school work and to accommodate the landlord's growing business.

The landlord acknowledges the tenant paid rent up until March 15, 2021. The landlord will return the equivalent of one month's rent to the tenant if the notice to end tenancy is upheld. The landlord seeks an order of possession effective March 15th since the tenant has paid rent up until that date.

The tenant gave the following testimony. She is a good tenant. She doesn't drink or smoke and the only outlet for her stress is listening to music and yoga. The tenant questions the landlord's need for more space as it wasn't made clear to her what the space is needed for.

The real reason the landlord seeks to end the tenancy is because of a parking dispute between the parties. The landlord is upset with where the tenant parks her vehicle and since early June, the landlords have been 'bullying' her. The landlord's wife gives her dirty looks and snickers at the tenant. It's a hostile environment for the tenant.

The purpose of ending the tenancy is not because the landlord actually needs the space for his family and himself; it is because the landlord does not want the tenant to park her car in front of the house. The tenant alleges the landlord has taken in a roommate and this roommate's vehicle is taking up one of the parking spots. There is now two trucks and a SUV parked in the driveway. The landlord has been placing different objects such as toys, signs, and recycling bins on the street to obstruct the parking spaces out front of the house where the tenant has parked since moving in. The landlord has stopped keeping a porch light on, making it difficult for the tenant to arrive at night.

In serving the notice to end tenancy, the landlord has caused anxiety and stress for the tenant. The tenant describes the landlord's actions as malicious because the tenant is currently laid off from her job in the airline industry and has underlying health issues.

In response to the tenant's question about taking in a roommate, the landlord testified that this person is his business partner, a commercial fisherman. This person stays with the landlord and leaves his truck parked in the landlord's driveway for safety reasons.

The landlord reiterated that this person will not move into the unit currently occupied by the tenant; the landlord wants it for himself to expand his business and for his children to do online studying.

Analysis

The tenant was served with the notice to end tenancy on December 11, 2020 when it was posted to the tenant's door. The tenant filed to dispute the notice the same day.

Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member is discussed in Residential Tenancy Policy Guideline PG-2A:

A. LEGISLATIVE FRAMEWORK

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

- 1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;*
- 2. is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit;*
- 3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.*

...

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...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.

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.

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

Here, the tenant has questioned the landlord's good faith in ending the tenancy for landlord's use, arguing that the ulterior motive for ending the tenancy is to regain the parking area formerly used by the tenant. A secondary ulterior motive suggested by the tenant during the hearing is that the landlord wants the unit for his business partner/roommate.

In reviewing the tenancy agreement, I note that the rent does not include parking. When a tenancy agreement is silent with respect to a parking spot, there is no obligation for the landlord to provide one on the property for the tenant's use. I do not find the parking issue to be an ulterior motive for ending the tenancy.

The second motive was for the landlord's business partner to occupy it. I find very little evidence to corroborate this allegation. The landlord has testified that this person is a roommate and a business partner. The landlord did not indicate any intention to change that relationship to landlord/tenant. The tenant has not supplied sufficient evidence for me to question the landlord's testimony on this point. Further, the tenant does not raise the roommate/business partner as an ulterior motive for ending the tenancy anywhere in her application. Although it is the landlord's onus to prove his good faith in ending the tenancy, I am not satisfied it would be reasonable for the landlord to provide evidence regarding the roommate when this ulterior motive was not raised in the tenant's Application for Dispute Resolution.

The question before me is whether the landlord has shown good faith in ending the tenancy for use by the landlord and his family. I am satisfied he has. The landlord testified he built the house four years ago when neither of his children were old enough to be in school. During the pandemic, I take notice that much of the education of school-age children is done online, requiring dedicated uninterrupted spaces free from distractions. The landlord owns such a space within his own home that the landlord can ultimately occupy with his family. Likewise, the landlord has provided testimony that he will also use the space to conduct personal business, including meeting with clients and reviewing building plans. I have been presented with no good reasons to question the landlord's testimony. I find the intended uses provided by the landlord are reasonable. I am satisfied the landlord intends, in good faith, to occupy the rental unit with his family. I uphold the landlord's notice to end tenancy.

Section 55 states:

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 [*form and content of notice to end tenancy*], and
- b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the landlord's notice to end tenancy and find there are errors in the form and content. I cannot determine when the landlord actually signed the Notice, however the date supplied is November 12, 2020. The landlord testified he served it on December 11th and this date is acknowledged by the tenant in her Application for Dispute Resolution. I find it reasonable to amend the landlord's notice to December 11, 2020 in accordance with section 68(1) of the *Act*. The Notice provides an effective (move-out) date of February 15, 2020 which is the prior year's February. Once again, I find the tenant knew or should have known the date is February 15, 2021, two months after the Notice was served. The Notice is amended to reflect the proper year, 2021 in accordance with section 68(1) of the *Act*.

The landlord has acknowledged the tenant has paid rent until March 15, 2021 and seeks an order of possession effective that date. I grant the landlord an order of possession effective at 1:00 p.m. on March 15, 2021 pursuant to sections 49 and 55 of the *Act*.

The landlord is to compensate the tenant with the equivalent of one month's rent in accordance with section 51 of the *Act*. I issue a monetary order to the tenant in the amount of \$1,200.00 pursuant to section 51.

This tenancy is ending on March 15, 2021. As such, the tenant's application seeking an order for the landlord to comply with the *Act* is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective 1:00 p.m. on ~~March 31, 2021.~~ **March 15, 2021.** Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the tenant's favour in the amount of \$1,200.00.

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 09, 2021

This correction is made pursuant to section 87.7 of the *Residential Tenancy Act* on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

The correction is noted in **bold underline.**

March 11, 2021

Residential Tenancy Branch