



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, RR, CNL

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The landlord acknowledged receipt of evidence submitted by the tenant. The tenant testified that they did not receive the landlord's evidence until 2 days prior to the hearing and didn't have sufficient time to review it. Residential Tenancy Branch Rules of Procedure 3.15 addresses the issue before me as follows:

3.15 Respondent's evidence provided in single package:

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the

applicant and the Residential Tenancy Branch not less than seven days before the hearing. Based on the above, I find that the landlord has not submitted their documentary evidence in accordance with the rules and therefore I have not considered it. However, all the testimony of the landlord's agent has been considered. This was explained in great detail to the tenant who indicated she understood.

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?

Should the tenant be granted an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to an order to compel the landlord to repair the suite or unit?

Background and Evidence

The landlord's agent gave the following testimony. The tenancy began in June 2008. The landlords are 81 and 89 years old. The agent testified that the landlords wish to use the entire home for their own benefit for their final years. The agent testified that male owner has significant health issues and wants to live in this ground level unit as he has difficulty in using stairs. The agent testified that the tenant was given a Two Month Notice to End Tenancy for Landlords Use of Property on March 3, 2021 with an effective date of May 31, 2021 for their own personal use.

The agent submits that the owners are elderly and that they wish to use the property in peace and tranquility. The agent submits that the landlords are fully aware of the monetary penalty that could be imposed if they do not use the property for the stated purpose on the notice. The agent testified that the notice was given in good faith and request an order of possession.

The tenant gave the following testimony. The tenant testified that the landlords issued the notice in bad faith to avoid conducting repairs in the unit. The tenant testified that the landlords are harassing and bullying her. The tenant testified that she is on a waiting list for B.C. Housing but isn't sure when she will be given housing. The tenant testified that the landlords have been lying about their health issues and that they are mobile enough to live in their portion of the house and don't need her space. The tenant requests that the Branch make an order that the landlords "leave me alone", and if they don't, they should have to pay monetary compensation.

Analysis

While I have turned my mind to all the documentary evidence of the tenant, 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 tenant gave 40 minutes of uninterrupted testimony; however, the tenant did not touch on the notice to end the tenancy at any point. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlords and making herself appear to be the wronged party.

Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's agent version to be more credible and consistent.

The landlords' agent gave clear concise and credible testimony. She provided details as to the logistical, physical and medical benefits for the landlords to occupy the suite. The agent has satisfied me that the landlords will occupy the unit do not have an ulterior motive or alternate purpose for the space. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. I find that the notice complies with section 52 of the Act in its form and content. 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 remains in full effect and force, the order of possession takes effect at 1:00 p.m. on May 31, 2021.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' 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: April 09, 2021

Residential Tenancy Branch