



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes +CNL, FFT

Introduction

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

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

The landlord YW attended with his son and agent DW who spoke on behalf of the landlord ("the landlord") throughout the hearing. The tenant attended. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2-month notice") on January 16, 2021, while the landlord confirmed receipt of the tenant's application for dispute resolution filed January 28, 2021. Both parties confirmed receipt of each other's evidentiary package. All parties are found to have been duly served with all documents.

Issue(s) to be Decided

Is the tenant entitled to cancel the Two Month Notice and to a Monetary Order for reimbursement of the filing fee? Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant explained this tenancy began on April 15, 2015 for a 1-year term; the tenancy has been extended annually and is set to expire on April 30, 2021 and to

become a month-to-month tenancy unless ended in accordance with the Act. Rent is \$1,200.00 per month and a security deposit of \$550.00 was paid at the outset of the tenancy which continues to be held by the landlord.

The tenant is seeking a cancellation of the Two Month Notice issued on January 15, 2021 with an effective date of March 30, 2020. The Notice states that the landlord intends to occupy the unit. A copy of the Notice was submitted.

The agent DW said his parents were the owners of the property. DW explained that he lived with his parents in the top floor unit. DW testified that his parents are in their 80's and have multiple serious health complaints, in support of which a letter from the landlords' doctor was submitted.

DW testified that the building's only laundry room is downstairs. The tenants and the landlords share the laundry facilities which are only accessible by the landlords via an exterior staircase. He explained his parents intended to take possession of the suite themselves, so they had more room and did not have to go up and down stairs to do laundry which is dangerous and risky given their health conditions.

The agent DW testified that his parents intend to move into the unit as soon as possible and DW will continue to live upstairs and care for them. They have no plans to rent the unit as long as they are able to occupy it themselves.

During the 40-minute hearing, the tenant repeatedly asserted that he and his family (his wife and elementary school child) do not want to move because of the difficulty of finding another place nearby. He said the landlord does not need to move for health reasons as claimed.

Analysis

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than 2 months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant sought a cancellation of the landlord's Two Month Notice. The landlord explained they are elderly and no longer able to safely use the exterior staircase so they can get to the laundry room downstairs. The landlord submitted medical evidence in support of their testimony about their health conditions; in particular, the male landlord

has fallen several times and been seriously injured.

The agent DW, the landlords' son, planned to continue living upstairs to care for his parents who intended to move into the unit downstairs as soon as possible. The landlord said he had no intention to re-rent the suite. The landlord stated they will provide the tenant with compensation of one month's rent.

The tenant questioned the good faith of the Notice saying that he had seen the landlords using the stairway without risk. He objected to moving during the pandemic and while his child was in school nearby. He provided no supporting evidence.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord's use of property. It notes 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.

This Guideline 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 disputed the good faith intention of the landlord, which I find has no basis given the testimony and evidence of the landlords which I find credible and reliable. I found no evidence supporting the tenant's claim of bad faith other than his unsupported observation that they do not need to live in the unit. I find the landlord's evidence credible when they say they want to live on the same level as the laundry area and to have their son live upstairs while continuing to care for them.

As noted above in *Policy Guideline #2*, “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.” I find that the landlord has met the burden of proof on a balance of probabilities that their intention is to live in the unit.

Although the Notice has an effective date of March 31, 2021, the landlord agreed that they requested an Order of Possession effective June 30, 2021. This effectively provided five months’ notice to the tenant.

I find the landlord has established that the Notice is issued in good faith. I dismiss the tenant’s application to cancel the Two Month Notice. Section 55(1) provides that the director must grant the landlord an Order of Possession if the landlord’s Notice complies with section 52 (form and content) and the tenant’s application is dismissed.

I find the Notice complied with section 52. As I have dismissed the tenant’s application, I grant the landlord an Order of Possession effective June 30, 2020 at which time the tenant and occupants must provide vacant possession to the landlord. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

The tenant’s application for reimbursement of the filing fee is not allowed as the tenant was not successful in the application.

Conclusion

I dismiss the tenant’s application without leave to reapply. I grant the landlord an Order of Possession effective June 30, 2020 at which time the tenant and occupants must provide vacant possession to the landlord. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the 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: April 23, 2021

Residential Tenancy Branch