



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, MNDCT, RP, LRE, OT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order for damages or compensation pursuant to section 67;
- An order of possession for the tenant pursuant to section 54;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;

The tenant attended with the advocate AF ("the tenant"). The landlord MM attended with the landlord HD and explained that there were four landlords, all registered owners of the property, and they were representing all the landlords ("the landlord").

Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The hearing lasted 91 minutes.

The tenant confirmed receipt on January 27, 2021 of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property ("the Two Month Notice" or "the Notice"), while the landlord confirmed receipt of the tenant's application for dispute resolution. Both parties confirmed receipt of each other's evidentiary package. All parties are found to have been duly served with all documents.

Preliminary Issue

The tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the claims on the tenants' application except for the following:

- Cancellation of the Two Month Notice

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Two Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties submitted many documents and photographs as well as considerable disputed testimony in a 91-minute hearing. 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 claim and my findings around each are set out below.

The parties explained the tenant has resided in the unit, one in a six-plex, for several years before the landlords purchased the property in November 2020. The parties agreed they signed a new month-to-month tenancy agreement on November 7, 2020, a copy of which was submitted. Rent is \$653.00 per month and a security deposit of \$300.00 and a pet deposit of \$300.00 were paid at the outset of the tenancy which continues to be held by the landlord. There are no arrears of rent.

The tenant is seeking a cancellation of the Two Month Notice issued on January 27, 2021 with an effective date of March 31, 2021. The Notice states that the landlord's close family member, a daughter of one of the landlord's, intends to occupy the unit

("the proposed occupant"). A copy of the Notice was submitted, and the tenant acknowledged service. The Notice is in the standard RTB form.

The parties agreed that before the landlord bought the building, it had fallen into a state of disrepair and most of the tenant's requests for repairs were not carried out.

The tenant testified as follows. The tenant claimed that the landlord had not issued the Notice in good faith. The tenant claimed that the property purchased by the landlord included a habitable house renovated by the landlord with two suites, one of which was vacant where the proposed occupant could live. The tenant also claimed that the Notice was issued by the landlord for the purpose of avoiding costly repairs requested by the tenant. Finally, the landlord intended to renovate the run-down unit and rent it out at substantially increased rent.

The tenant submitted many photographs and documents regarding the condition of the unit in support of their assertion that the unit needed repairs, the landlord had been repeatedly informed of required repairs, and the landlord refused to carry them out. Key requested and ignored repairs were part of the kitchen wall and the presence of black mold.

The tenant testified that the separate building on the property has two units which are available to rent. The tenant based this assertion solely on her observation of comings and goings to the building.

The landlord denied the tenant's assertions. They stated as follows. They met with the tenant shortly after they purchased the property for the purpose of signing a new lease and ascertaining needed repairs. The landlord testified the tenant informed them of two repair issues (the sink and the toilet) both of which were promptly fixed. Both parties agreed there was a knife lodged in the sink drain which was removed.

The landlord also stated that they have met their obligations to repair and maintain. They have done substantial renovations to both the building and the unit since they purchased the property. Other repair requests by the tenant were promptly carried out, such as repairing a hole in drywall, replacing windows, cleaning/bleaching mold areas, and providing a humidifier. The windows were ordered before the Notice was issued and the landlord submitted a substantiating invoice.

The landlord acknowledged that more work needed to be done to the tenant's unit and some repairs had not been completed. They explained that the work was interrupted

when the tenant suddenly refused admission to the unit by the contractors. Also, the landlord stated that some of the workers felt “unsafe on the job due to the noxious odours, smoke and the behaviour” of the tenant’s guests, as stated in the written submissions. The landlord claimed they were willing to continue to renovate and fulfil their obligations to repair as soon as the tenant granted them access to do so.

In their written submissions, the landlord addressed each of the tenant’s allegations of ignored repairs and disputed the veracity of her claims. The landlord testified at length about their ongoing efforts to complete the work in a timely and professional manner. They provided supporting evidence such as receipts and copies of emails to the tenant.

The landlord asserted that the tenant’s application was a “stalling tactic to delay move out and is a demand to pay extra compensation where none is warranted.” The landlord claimed that the tenant wanted a cash incentive to vacate.

The landlord explained that the daughter of one of the landlords intended to move into the unit. The landlord submitted a copy of a written submission of the daughter setting out her situation. She explained that the pandemic had interrupted her educational plans and had caused loss of employment. A letter from her previous employer was submitted. The landlord testified she is unable to find affordable accommodation and is now “couch surfing”.

The landlord denied there was an empty suite in the house on the property that would be available for occupation. They provided details of occupancy and rent of the two suites in the building. The tenants did not provide any documentary evidence in support of their assertion that the house was partially vacant except to say they had not observed an occupant in the lower suite.

The landlords explained that they chose the tenant’s unit for the proposed occupant because it is the most modest accommodation and is the least rent.

The tenant requested a cancellation of the Notice. The landlord claimed compliance with the Act and requested an Order of Possession.

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.

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. Section 49(8) also allows the tenant to challenge the Notice within 15 days.

The tenant sought a cancellation of the landlord's Two Month Notice. The landlord explained that the close family member is the daughter of the one of the landlords. She intends to occupy the unit because of educational and employment disruption caused by the pandemic. In support of their position, the landlords submitted credible and comprehensive documentary evidence including a letter from the daughter and a confirmation of loss of employment.

The landlord stated they will provide the tenant with compensation of one month's rent and requested an Order of Possession on May 30, 2021 which provided the tenant with a total of four months' notice.

The tenant questioned the good faith of the Notice saying that the landlord had a vacant nearby suite, they were attempting to avoid doing repairs, and they intended to rent at a higher rate when the tenant vacated.

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.

In *Gallupe v. Birch*, 1998 CanLII 1339, the British Columbia Supreme Court stated:

[35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

The tenant has disputed the good faith intention of the landlord.

I find the landlord's submissions to be persuasive, professional, and forthright. The agents' testimony, which was supported by well-organized and complete documentary evidence, credibly claimed that the landlord started renovations to the unit shortly after they purchased the property and continued until stopped by the tenant herself. I find the landlord took all reasonable efforts to repair the unit according to their inspection and the tenant's requests. I find the landlord's testimony was supported in all key aspects by the documentary evidence which was thorough and convincing.

In contrast, I found the tenant's evidence to be less persuasive. I prefer the version of events to which the landlord testified as supported by substantial documentary evidence. Where the testimony conflicts, I prefer the landlord's evidence in all respects.

In a review of the testimony and documentary evidence, I find no basis for the tenant's arguments. I accept the reasons set out in the Notice and find there is no evidence of any another purpose or motive to requesting that the tenant vacate the unit. I find the landlord to express a genuine, credible intention to have the proposed occupant, a daughter of one of the landlords, move in. I do not find any reason to question the honesty of the expressed motive to the landlord which I accept. I find that they intend to do what they say they are going to do.

I find there is no evidence that the landlord has issued the Notice to avoid repairs. I find that, after many years of poor maintenance, the landlord carried out significant improvements to the unit and would have continued doing so except for the actions of the tenant herself as discussed earlier. I do not accept the tenant's assertion that she is a "perfect tenant" who cooperated in all respects with the contractors' hired to do the repairs.

I accept the landlord's evidence that there are no vacant units in which the proposed occupant may live. I find the landlord's evidence believable when they testify there is no such vacant unit. I find the tenant's claims to the contrary to be unsubstantiated and groundless.

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 as to the intention stated in the Notice and evidence.

Although the Notice has an effective date of March 31, 2021, the landlord requested an Order of Possession effective May 30, 2021. This effectively provides five months' notice to the tenant.

I find the Notice complied with section 52 (form and content).

In conclusion, 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.

As I have dismissed the tenant's application, I grant the landlord an Order of Possession effective 1:00 PM on May 31, 2021 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.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an Order of Possession effective 1:00 PM May 31, 2021 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 28, 2021

Residential Tenancy Branch