



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant and the landlord attended the hearing and the landlord was accompanied by his spouse, who observed only and did not take part in the hearing. The landlord was represented at the hearing by an agent. The tenant and the landlord's agent each gave affirmed testimony and were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent testified that the tenant entered into a tenancy agreement with a previous landlord for a month-to-month tenancy to commence on May 1, 2016 for rent in the amount of \$680.00 per month payable on the 15th day of each month. The current landlord purchased the property on April 21, 2019, and a new tenancy agreement was signed by the parties on June 18, 2019 with an Addendum specifying the same amount of rent payable in instalments of \$340.00 on the 1st and 15th days of each month. Copies

have been provided as evidence for this hearing, which also specify a security deposit paid of \$250.00. The rental unit is a garage that has been converted to a coach house, and the current landlord also lives on the property. The tenant still resides in the rental unit.

On February 23, 2021 the landlord served the tenant personally with a Two Month Notice to End Tenancy for Landlord's Use of Property and by posting a copy to the door of the rental unit. A copy has been provided for this hearing and it is dated February 23, 2021 and contains an effective date of vacancy of April 30, 2021. The reason for issuing it states that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), being the landlord or the landlord's spouse. The landlord's agent testified that new arrangements have been made for a parent of the landlord to move into the rental unit, in order to be closer to assist with the landlord's autistic child. The landlord had thought that the parents would reside in the larger house, which is why the Notice stated that the landlord would be residing in the rental unit once this tenancy ended.

The landlord had previously issued a notice to end the tenancy for landlord's use of property in June, 2020 with an effective date of vacancy in August, 2020 but due to COVID-19 the landlord agreed to cancel it, and the parties then made a verbal agreement to increase rent to \$850.00 per month commencing in September, 2020. The tenant paid the increase for a short term and then deducted the over-payments from future rent.

The tenant testified that the notice to end the tenancy for landlord's use of property was not served personally on the tenant, but posted to the door of the rental unit on February 23, 2021.

The landlord gave the tenant a notice to end tenancy previously, which was effective August 31, 2020, but prior to that the landlord asked if the tenant was willing to stay and the tenant agreed. The landlord said that rent had to be increased, the tenant could stay for a long time, and the tenant agreed.

On February 22, 2021 the tenant's son advised that a rent freeze was in effect, so the tenant sent an email to the landlord saying that the Residential Tenancy Branch gave that advice. The next day, the tenant received the Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant does not believe the landlord is acting in good faith, and is presently building another apartment at the back.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord also bears the burden of establishing good faith intent to use the rental unit for the purpose contained in that Notice.

I have reviewed all of the evidentiary material of the parties, and note that a message was sent by the tenant to the landlord dated February 19, 2021 stating that the tenant had contacted the BC Residential Tenancy Board that day inquiring about a rent increase, and that the September 1, 2020 increase was not lawful. It also states that the overpayments could be deducted from future rents payable. The notice to end the tenancy given by the landlord is dated February 23, 2021, which is 4 days later.

The landlord's agent testified that the landlord purchased the rental property on April 21, 2019 and entered into a new tenancy agreement with the tenant for a tenancy to commence on June 18, 2019. The landlord's agent also testified that the landlord intended to move in thinking that the landlord's parents would live in the bigger house on the property, but subsequently made other arrangements for the parent to assist with the landlord's autistic child while residing in the rental unit. If the landlord's parents are to assist the landlord with an autistic child, I question why the landlord entered into the tenancy agreement with the tenant, and why the landlord would withdraw a previous notice once the tenant had verbally agreed to the rent increase. The landlord's evidence contains a caption that the tenant requested more time due to the COVID-19 pandemic. However, I accept the testimony of the tenant that the agreement to continue the tenancy was based on an illegal rent increase.

The landlord has also changed who will occupy the rental unit since giving the latest Notice. In giving such a Notice there must be no ambiguity, but a genuine intent to use the rental unit for the purpose contained in the Notice.

Given the timing of the issuance of the second notice to end the tenancy, and considering that the landlord has already had a change of heart with respect to who will be residing in the rental unit once vacated, I am not satisfied that the landlord has established good faith intent to use the rental unit for the purpose contained in that Notice. Therefore, I cancel the Notice and the tenancy continues.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 23, 2021 is hereby cancelled and the tenancy continues.

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: June 07, 2021

Residential Tenancy Branch