



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 24, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated March 11, 2021 (the “Notice”)
- For compensation for monetary loss or other money owed
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with Legal Counsel. The Landlord appeared at the hearing with K.M.

The Landlord provided the correct spelling of their last name which is reflected in the style of cause.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the Tenant I would consider the dispute of the Notice and request to recover the filing fee and dismiss the remaining requests with leave to re-apply as they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules. The Tenant and Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony and submissions as well as all documentary evidence. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 04, 2020 and was for a fixed term ending April 30, 2021. Rent is \$4,000.00 per month due on the first day of each month.

The Notice was submitted as evidence. The Notice has an effective date of May 31, 2021. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's close family member. The Notice states that the rental unit will be occupied by the Landlord or the Landlord's spouse. The Tenant did not take issue with the form or content of the Notice when asked.

There was no issue that the Notice was served on March 17, 2021 and received the same day.

The Landlord testified as follows. They intend to move into the rental unit with K.M., their husband, and three children. They sold the house they were living in with their family on March 27, 2021 as shown in the documentary evidence submitted. They are currently living at their mother's house while waiting to move into the rental unit.

The Tenant and Legal Counsel provided the following relevant testimony and submissions. The Notice was not issued in good faith. The relationship between the Landlord and Tenants has become acrimonious over the course of the tenancy which is the reason the Landlord issued the Notice. The Landlord issued the Notice to get rid of

the Tenants from the rental unit. The Landlord owns three other properties that the Landlord could move into. The three other properties are better suited for the Landlord and their family. The Landlord's previous house was five or six bedrooms whereas the rental unit only has two bedrooms and two dens. The rental unit is not big enough for the Landlord and their family. The other properties owned by the Landlord all have five or six bedrooms and are more suited to the Landlord and their family.

The Tenant and Legal Counsel provided the following further relevant testimony and submissions. The Tenants rented the rental unit with the intention of farming the property. The Landlord did not tell the Tenants that the Landlord ran a business out of the workshop on the property that is inconsistent with the Tenants' farming intentions. The Landlord made assurances at the start of the tenancy which were not kept up during the tenancy. The Landlord told the Tenants they did not intend to move into the rental unit because the Landlord wanted to build their dream home on the property. The Landlord is not planning to move into the rental unit. Photos in evidence stating "new home site" support the position that the Landlord has no intention of moving into the rental unit and intends to build their dream home on the property.

The Tenant and Legal Counsel provided the following further relevant testimony and submissions. People have been constantly coming onto the property at all times of the day. The Landlord or others entered the property five times one week. The Landlord made representations at the start of the tenancy about the use of the workshop in relation to the Landlord's business which turned out to be untrue. The Landlord has had contractors attend the property to look at the location where the Landlord intends to build their dream home. The Notice was issued because the Tenants complained about the Landlord not keeping their promise about people entering the property. The relationship between the Tenants and Landlord deteriorated immediately when the Tenants told the Landlord they needed to give proper notice to enter the property. The Tenants complained to the Landlord about security cameras placed on the property. The Landlord views the Tenants as a problem and are seeking to get rid of them. The Landlord stopped replying to emails from the Tenants. The Landlord removed the mower from the property so the Tenants could not mow the lawn. The Landlord brought large groups of people onto the property to pressure the Tenants off the property.

Legal Counsel referred to documentary evidence to support the position that the rental unit is too small for the Landlord and their family and that the other properties owned by the Landlord are more suited to the Landlord and their family.

In reply, the Landlord provided the following relevant testimony and submissions. The rental unit has five bedrooms. The rental unit is 3200 square feet. It is correct that the Landlord's previous house was larger; however, the rental unit is not too small for the Landlord and their family. The Landlord agrees they own three other properties; however, all of these are tenanted and there are leases in place that extend into the future. The Landlord agrees the relationship between them and the Tenants has deteriorated and that this occurred from the start of the tenancy. The Tenant never used the mower. All the issues raised by the Tenant were discussed at the start of the tenancy, such as the security cameras and the use of the workshop. The Landlord does intend to build another home on the property in the future but this is not planned for the near future.

Both parties submitted documentary evidence. I have reviewed all of the documentary evidence.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act*. The Tenants had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. I accept that the Notice was received March 17, 2021. The Application was filed March 24, 2021, within time.

Section 49(3) of the *Act* states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2A deals with ending a tenancy for occupancy by a landlord and states:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised,

the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

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 dishonest motive.

I am satisfied based on the testimony of the Landlord and documentary evidence that it is more likely than not that the Landlord and their family intends to move into the rental unit. There was nothing about the Landlord's testimony that caused concern about the reliability or credibility of the testimony. The Landlord's testimony about having had sold the home they were living in is supported by the documentary evidence.

I do not find that the issues raised by the Tenants call into question the testimony of the Landlord in relation to their intent to move into the rental unit. I find that the Tenants have raised issues that are not supported in the evidence.

I have reviewed all of the communications between the parties that were submitted as evidence. I acknowledge that the relationship between the parties deteriorated as the parties agreed on this. However, I do not find that the communications in evidence support that the Landlord issued the Notice in bad faith or for the purpose of getting rid

of the Tenants due to the acrimonious relationship between the parties. There is nothing in the communications in evidence that shows the Landlord issued the Notice other than for the purpose stated on the Notice.

I do not accept the submission that the rental unit is too small for the Landlord and their family of five. The MLS listing submitted by the Landlord and relied on by the Tenants shows that the rental unit has at least two bedrooms, two dens and a “games room”. It appears to me from the MLS listing that the rental unit has three bedrooms.

Regardless, even accepting that the rental unit has two bedrooms and two dens as stated by the Tenant, I do not accept that this is clearly too small for a family of five, three of which are children.

There is no issue that the Landlord intended to build another home on the property at some point and that the Landlord continues to intend to do so in the future as the parties agreed on this. However, I do not find that this calls into question that the Landlord intends to move into the rental unit now as there is no second home on the property at this point.

There is no issue that the Landlord owns other properties as the Landlord acknowledged this. The Landlord explained why they are not moving into these other properties. I found the Landlord’s explanation reasonable. It is not clear how the Tenants are in a position to know what is happening with the other properties or whether these are better suited for the Landlord and their family. There is no documentary evidence before me that calls into question the Landlord’s explanation.

Given the above, I am satisfied the Landlord has proven the grounds for the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

I uphold the Notice and dismiss the Tenants’ dispute of the Notice.

Section 55(1) of the *Act* states:

55 (1) 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.

Pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenants.

Given the Tenants were not successful in the Application, they are not entitled to recover the filing fee.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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

Dated: July 19, 2021

Residential Tenancy Branch