



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

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

- the cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:27 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant served her with the notice of dispute resolution form and two supporting evidence packages. She testified that she served the tenant with her evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Tenant's Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, the landlord bears the onus to prove the Notice is valid, despite the fact that this application was made by the tenant.

As for the rest of the relief sought by the tenant, as this is his application, he bears the onus to prove his claim. As he failed to attend the hearing, I find that he has failed to discharge his evidentiary burden to prove that he is entitled to the orders sought. Pursuant to Rule of Procedure 7.4, the tenant (or his agent) must attend the hearing and present his evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenant to the Residential Tenancy Branch in advance of the hearing.

I dismiss all portions of the tenant's application, except the portion disputing the Notice, without leave to reapply.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting in December 2010 or 2011 (the landlord could not recall the exact date and could not locate a copy of the written tenancy agreement). The rental unit is a two-bedroom basement suite located in a single-detached house. The landlord resides in the upper half of the house (the "**upper unit**") with her adult daughter. Monthly rent is currently \$907. The tenant paid the landlord a security deposit of \$425, which the landlord continues to hold in trust for the tenant.

On March 17, 2021, the landlord served the tenant with the Notice by registered mail. On it, she states the reason for ending the tenancy is so that the rental unit may be occupied by her daughter. The Notice specified an effective date of May 31, 2021. The tenant disputed the Notice on April 1, 2021.

The landlord testified that her daughter recently graduated university and moved back in with her mother in the upper unit. The upper unit has three bedrooms: one for the landlord, one for her daughter, and one for the landlord's son (who is away at university

but stays in the rental unit during the summer). Her daughter started working for the local school district as a teacher in September 2020. The landlord testified that her daughter needs her own space, as the two of them butt heads when living in such close proximity.

The landlord testified that the upper unit does not have enough space for both her and her daughter. Her daughter needs space to do marking (which she currently does in the dining room), be on Zoom calls (which she also does from the dining room and during which the landlord must remain quiet), entertain her partner and friends (the landlord either leaves the upper unit or retreats to her bedroom when her daughter does this), and have her own space to “create her own environment”.

The landlord testified that her daughter intends to use one of the bedrooms in the rental unit as an office for marking assignments and holding Zoom calls. She testified that having her own unit would afford her daughter the privacy and autonomy a young woman should have.

The landlord testified that she owns a second property, a “duplex”, which is rented out to two families. She testified that each side of the duplex has more space than her daughter requires, and that she and her family used to live in the duplex with her now-deceased ex-common law partner. She testified that her ex-partner’s death was hard on the whole family, and that her daughter would rather not move back into the home she used to share with her deceased father.

The landlord testified that her daughter has secured employment with the local school district for the upcoming school year (two days a week in a class room and three days a week as a substitute teacher), and that she intends on residing in the rental unit on a permanent basis. The landlord denied having any motivation for issuing the Notice other than so as to allow her daughter to move into the rental unit.

Analysis

Section 49(3) of the Act states:

Landlord's notice: landlord's use of property

(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.

Section 49(1) of the Act defines “close family member”:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

I find that the landlord's daughter is a close family member, as defined by the Act. As such, I must determine if the landlord's daughter intends in good faith to occupy the rental unit.

Policy Guideline 2A considers the meaning of "good faith". It states:

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. [...]

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 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 accept the landlord's testimony in its entirety. I found it to be credible, reasonable, and internally consistent. Based on her testimony, I find that the landlord's daughter intends to occupy the rental unit if the landlord obtains vacant possession. The basis as to why her daughter wants to move into the rental unit is reasonable. I accept that the landlord and her daughter want separate living spaces and that the upper unit does not have enough to meet their needs.

Additionally, I accept the landlord's explanation as to why she selected the rental unit, and not a unit located in the duplex, as the location to where her daughter would move. The duplex has negative connotations for her daughter and is larger than her daughter has use for.

Based on the fact that the landlord's daughter has secured employment in the local school district for the upcoming school year, I am satisfied that she intends to remain in the rental unit for at least six months.

There is no evidence before me which would suggest that the landlord has issued the Notice for any reason other than the one stated on it. I am satisfied that the landlord's explanation as to why she issued the Notice is the sole reason the Notice was issued. Accordingly, I am satisfied it was issued in good faith and without a dishonest motive.

As such, I dismiss the tenant's application to cancel the Notice, without leave to reapply.

Section 55 of the Act states:

Order of possession for the landlord

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.

I find that the form of the Notice complies with section 52 of the Act.

At the hearing, the landlord stated that, in the event she was successful in this application, she would want the order of possession effective August 31, 2021.

As I have dismissed the tenants' application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective March 31, 2020 at 1:00 pm.

The landlord is reminded of her responsibilities relating to tenant's compensation and the security deposit at sections 51 and 38 of the Act respectively.

Conclusion

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

Pursuant to section 55 of the Act, I order that the tenant deliver full and peaceable vacant possession and occupation of the rental unit to the landlord by August 31, 2021.

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: July 20, 2021