



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On April 7, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”) and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing. The Landlord was assisted by legal counsel.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me. Both parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants stated that this is the second Two Month Notice to End Tenancy for Landlord’s Use of Property that the Landlord has issued to them. The Tenants submit that the Landlord stated she wants to move in because it was expensive to be a landlord when faced with repairs. The Tenants also stated that they had found advertisements online listing the rental unit for rent and sale. The Tenants stated that

the first Two Month Notice was disputed, and the Landlord did not attend the hearing, and the Two Month Notice was cancelled.

The Tenants submitted that the Landlord is again raising the same facts and there is no new evidence today. The Tenants submitted that the matter has already been adjudicated.

In reply, the Landlord's counsel submitted that a case cannot be relitigated if the facts are the same. Counsel stated that the Landlord has new facts and circumstances. Counsel submitted that the Landlord is frightened and concerned about the treatment needs of her partner who recently had a lung removed. Counsel submitted that the Landlord and her partner are living in campers. Counsel submitted that there is a three-month gap between issuing the notices to end tenancy and the Landlord's reasons for issuing the Two Month Notice is factually different. Counsel submitted that the Landlord is now engaged to her partner and they plan to occupy the rental unit and start their lives together.

Res judicata is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I have considered the parties submissions regarding whether or not this dispute should be heard. I find that the Landlord failed to attend the hearing for the dispute of the first Two Month Notice to End Tenancy. The Landlord was not present to provide testimony on her reasons for ending the tenancy. The Arbitrator found that the Landlord has not provided sufficient evidence to meet her burden of proof in the matter and cancelled the Two Month Notice.

I find that the second Two Month Notice was issued more than four months after the first Two Month Notice to end tenancy. The Landlord testified that she needs to return to work because of losing her staff due to covid. She stated that her work location is close to the rental unit. She testified that her partner has had a couple of surgeries; she is living in a van, and she believes she is one month pregnant.

I find that the merits behind the issuance of first Two Month Notice were not fully heard because the Landlord did not attend the hearing to provide any testimony. The Landlord had asked for a postponement that was apparently declined by the Tenants. I am not satisfied that the Landlord has no new evidence and is raising the same facts

because the Landlord has yet to provide her full testimony in support of ending the tenancy.

The Tenants request to dismiss this matter based on the principle of res judicata is declined. The hearing proceeded.

Issues to be Decided

- Does the Landlord have a good faith intention to move into the rental unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 1, 2018 as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$1,650.00 is due to be paid to the Landlord by the first day of each month.

The Landlord issued the Two Month Notice to the Tenants using registered mail. The reason for ending the tenancy cited within the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The Landlord or the Landlords spouse.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is May 31, 2021.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a tenant has the right to dispute it within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants received the Two Month Notice on March 29, 2021, and disputed the Notice on April 7, 2021, within the required time period.

The Landlord provided testimony on why the tenancy should end. The Landlord submitted that it was always her intention to move back into the rental unit. At the time of entering into the tenancy, the Landlord was living at a property that was set to be demolished in 2020. It was her intention to travel with her partner and move into the rental unit upon completion of their travels. Covid 19 travel restrictions frustrated her plans of travelling, and she travelled within the Province in a camper van.

The Landlord submitted that while travelling, her partner became ill with respiratory issues and was diagnosed with lung cancer in October 2020. She submitted that she decided to move into the rental unit to care for her partner and she issued the Tenants a Two Month Notice to End Tenancy. The Landlord submitted that her partners surgery was scheduled for January 17, 2021, shortly before the January 2021 hearing related to the first Two Month Notice and that her request for an adjournment was denied by the Tenants.

Since the January 2021 hearing, the Landlord has been living full time in her van and her partner is living in his own camper parked by his workplace but is unable to work in the initial stages of his recovery.

The Landlord's counsel submitted that there is nothing in law preventing the Landlord from occupying the rental unit.

The Tenants provided the following testimony:

The Landlord has an ulterior motive to end the tenancy and the previous Arbitrators decision touches on the Landlord's ulterior motive. The Tenants stated that they asked the Landlord to complete repairs back in 2019 and only some repairs were completed.

The Tenants stated that they found an online advertisement that the unit was for rent as a two-bedroom unit and that the Landlord had also listed the property for sale.

The Tenants stated that the Landlord has other rental properties and that in April 2021 she told them that she was on her way to renovate another property. The Tenants submitted that it is not a necessity for the Landlord to live in the rental unit.

The Tenants testified that on February 1, 2021, there was a sewage back up in the rental unit and this sewage issue was reported to the Landlord on February 1, 2021.

The Tenants stated that they have been threatened with eviction by the Landlord many times since 2019. The Tenants stated that the Landlord told them it is expensive to be a landlord when faced with repairs.

In reply, the Landlord testified that she owns other rental properties in Alberta that she never plans to live in. She testified that she is partners on a residential property on Vancouver Island and that her business partner is moving into that home.

The Landlord stated that her rental advertisement was to rent out a room as a roommate, because of her travel plans.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636. 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA 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 (s.32(1)).

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that a landlord has the right to end a tenancy if they intend in good faith to occupy the rental unit. I find that the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property for the unit to be occupied by the Landlord or the Landlord's spouse. I accept the Landlord's testimony that she intends to move into the rental unit.

I must also consider Policy Guideline #2A with respect to the concept of good faith. I accept the Guideline that there be no ulterior motive for ending the tenancy, and that the landlord is not trying to avoid obligations under the Act.

I have turned my mind to whether or not the Landlord has an ulterior motive to end the tenancy and is not trying to avoid obligations. I have considered the earlier Decisions provided by the Tenants. In the Decision dated January 26, 2021, the Arbitrator writes:

In the hearing, the Tenants said:

We've been in this tenancy for quite some time, and the Landlord has raised on two separate occasions that she was going to be moving in. These came on the heels of

repairs needed at the suite. Then she no longer needed the unit and was going to make repairs. She also said she was going to sell it, and this was in 2019. The timing of [the Two Month Notice] was a bit suspicious, which lends to her not acting in good faith. We received the repayment plan first, which wasn't signed by [the Landlord], our Landlord - it was by [her husband]. This was shortly after the repayment plan and her not getting a rent increase.

In the Decision dated June 9, 2021, related to the Tenants request for emergency repairs, the Arbitrator writes:

Based on the evidence before me overall, I find that the issues raised by the Tenants amount to emergency repairs pursuant to section 33 of the Act. I find that the evidence from [M.'s] Plumbing, and the Landlord's evidence from G.C. at [V.P.D.], corroborate the Tenants' claim that a sewage smell was emanating from the plumbing fixtures in the rental unit. Further, both plumbers noted having observed back grading, which may require the main sewer line to be re-piped.

I find that there is an urgency surrounding having the smell of sewage in a rental unit. I find that eliminating this smell is a matter of some urgency, which is necessary for the use of the residential property and amounts to repairing damaged or blocked sewer pipes....

I find that it is more likely than not that the Tenants raise concerns regarding repairs to the rental unit prior to the issuance of the first Two Month Notice to End Tenancy for Landlord's Use of Property that was cancelled on January 26, 2021.

I find that on February 1, 2021, the Tenants reported a sewage back up problem to the Landlord. I find just over one month later, the Landlord issued the second Two Month Notice to End Tenancy for Landlord's Use of Property dated March 10, 2021. I find that the Tenants had raised concern regarding an emergency repair to the Landlord prior to the issuance of the second Two Month Notice to End Tenancy dated March 10, 2021.

I find that the Tenants applied for dispute resolution for an order for the Landlord to make emergency repairs to the rental unit and on June 9, 2021, an Arbitrator found that emergency repairs to the rental unit are required and the Arbitrator ordered the Landlord to complete the emergency repairs to the rental unit.

While I accept that the Landlord intends to move into the rental unit; after considering the totality of the evidence before me, I find that the Landlord's recent attempts to end the tenancy by issuing the notices to end tenancy suggest that the Landlord has an ulterior motive to end this tenancy rather than comply with section 32 and 33 of the Act.

In these circumstances, I find that it would not be reasonable to permit the Landlord to end the tenancy contract in any attempt to avoid financial costs for responsibility to repair or maintain the rental unit.

The Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 10, 2021 is granted. The Two Month Notice dated March 10, 2021 is set aside.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 10, 2021, is granted. The Two Month Notice dated March 10, 2021 is cancelled.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. The Tenants are authorized to deduct \$100.00 from one (1) future rent payment.

The tenancy will continue until ended in accordance with the legislation.

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: August 4, 2021

Residential Tenancy Branch