



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

CNL, FFT

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with two applications filed by the tenant pursuant the *Act*.

The tenant's first application sought:

An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55; and

Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant's second application sought:

An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and

Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant attended the hearing and the landlord attended the hearing accompanied by his counsel, MG and an interpreter, TC. As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Applications for Dispute Resolution and evidence; the tenant acknowledged service of the landlord's evidence package. Neither party raised any issues with timely service of documents.

Preliminary issue

At the commencement of the hearing, landlord's counsel advised me that the landlord does not want to pursue the One Month Notice to End Tenancy for Cause. The landlord sought permission to withdraw it and the tenant understood that the landlord's One Month Notice to End Tenancy for Cause would be withdrawn. I allowed the withdrawal of the landlord's One Month Notice to End Tenancy for Cause at the commencement of

the hearing pursuant to section 62 of the *Act*. The tenant's application to cancel that notice is likewise dismissed.

Issue(s) to be Decided

Should the landlord's Two Month's Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

Pursuant to rule 7.4 of the Residential Tenancy Branch Rules of Procedure, only documentary evidence presented during the hearing by each party was considered in this decision. 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 / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on November 1, 2020 and the tenancy is set to end on October 31, 2021. The tenancy agreement is "ticked" at part 2D, indicating the tenancy will continue on a month to month basis or another fixed length of time unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

The landlord gave the following testimony. He had lived in the rental unit with his wife for 11 years before deciding to move into their current home. There are no restrictions on rentals in his current building, however there is a restriction on rentals in the building where the tenant's rental unit is located.

On November 16, 2020, the landlord received his first notice from the strata corporation where the rental unit is located indicating the landlord is in violation of the strata corporation's bylaws for renting his unit without obtaining the authorization from the strata corporation. The landlord testified that since receiving the first notice, he has been receiving fines for the unauthorized rental and directed me to a ledger showing a fine of \$200.00 levied against him on March 1, 2021.

The landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use by registered mail and the tenant acknowledges receiving it on July 7th. A copy of the notice was provided as evidence. The notice provides an effective (move-out) date of November 1, 2021 and states the rental unit will be occupied by the landlord or the landlord's spouse.

The landlord testified that there are 3 reasons they want to take possession of the rental unit. The first reason is because the landlord and his wife are familiar with the neighbourhood, having lived there for 11 years. The second reason is because the condominium they are currently occupying does not have rental restrictions whereas the tenant's building does. The landlord and his wife do not want to disobey the bylaws of the building and they are ready and willing to move back in. The third reason is because the landlord is an electrician with jobsites located closer to the tenant's unit than their own condominium. The landlord's spouse would also have an easier commute from the tenant's unit to the city instead of where they currently live.

The tenant gave the following testimony. The landlord wants to end the tenancy to avoid the fines from the strata corporation which the tenant describes as an ulterior motive for ending the tenancy. The tenant argues that it's not his fault the landlord's error led to fines from the strata.

The tenant submits that the landlord has not provided any evidence to prove he truly intends on using the unit or moving into it. When questioned as to what the tenant believes the landlord would do with the rental unit if the landlord regained possession of it, the tenant was unable to provide a response. No allegation of the landlord re-renting the unit was provided, however the tenant testified that in March of 2021, the landlord's wife told the tenant's wife that they intended on selling the rental unit. The tenant's wife was not called as a witness to provide any evidence and the tenant did not direct my attention to any of the documentary evidence he uploaded for this hearing to support this assertion.

The tenant further submits that the landlord, his wife and child have their own apartments, however the tenant did not provide any documents to corroborate this statement or supply any reasoning as to how this relates to the landlord not showing good faith in his intent to occupy the rental unit.

Analysis

Based on the evidence before me, the tenant is deemed to have received the landlord's Two Month's Notice to End Tenancy for Landlord's Use on July 7th. The tenant filed an application to dispute the landlord's notice on July 12th, within 15 days of receiving it as required by section 49 of the *Act*.

Pursuant to section 49(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 section 49(2)(b)(ii), if the tenancy agreement

is a fixed term tenancy agreement, the landlord may end the tenancy not earlier than the date specified as the end of the tenancy.

Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member is discussed in Residential Tenancy Branch policy guideline PG-2A which describes the good faith requirement:

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)).

The tenant alleges the landlord had an ulterior motive of avoiding fines levied by the strata corporation as the landlord's motivation for ending the tenancy. Here, I find the tenant's allegations closely align with the landlord's own testimony. The landlord acknowledges he doesn't want to "disobey the bylaws of the building" and he is willing to move back into the building to prevent further infractions of the strata corporation's bylaws. Rather than being an ulterior motive for ending the tenancy, I find the avoidance of fines to be a compelling and persuasive reason offered for ending the tenancy. I accept the landlord's evidence of the multiple infraction letters and the \$200.00 fine paid to the strata as proof that the landlord's failure to comply with the bylaws would be a financial burden that would only cease by the landlord/owner moving back into the unit.

The tenant made a reference to the possibility that the landlord may sell the unit after the tenant moved out, however that testimony was not corroborated by written documentation such as a sworn affidavit from the person who allegedly heard the landlord say it (the tenant's spouse) or first person testimony from her. Based on a lack of corroborative evidence, I give little weight to the tenant's speculation that the landlord has failed to show good faith in his intent to occupy the rental unit.

I accept the landlord's testimony that the location of the rental unit makes commuting time to his jobsites and to his spouse's workplace more convenient than where they are currently living. I also accept that the landlord and his spouse are familiar with the location of the unit and are comfortable living there, having lived there for 11 years

previously. The tenant did not provide any convincing arguments to cause me to question the landlord's motives.

I find the landlord's primary motivation for re-occupying the unit is to terminate the fines being levied against him for not occupying the unit as the owner. I find this single reason to be the most substantial reason for re-occupying the unit. The landlord has satisfied me he that he intends, in good faith, to occupy the rental unit with his spouse. I uphold the landlord's notice to end tenancy.

Section 55 states:

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 have reviewed the copy of the notice to end tenancy supplied by the tenant and find it complies with section 52 in terms of form and content. I note that the effective (move-out) date provided on the notice is the day after the tenancy was scheduled to end on the tenancy agreement, complying with section 49(2)(b)(ii). As such, I grant the landlord an order of possession effective at 1:00 p.m. on November 1, 2021 pursuant to section 49 of the *Act*.

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Pursuant to section 51(1.1), a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord. The landlord is put on notice that he is required to comply with section 51 prior to November 1, 2021.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on November 1, 2021**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme 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: August 27, 2021

Residential Tenancy Branch