Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"). In addition, the tenant seeks to recover the cost of the filing fee under section 72 of the Act.

Both parties attended the hearing on August 27, 2021. The parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began July 1, 2014. Monthly rent is $1,262.00 and the tenant paid a security deposit of $550.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

On April 10, 2021 the landlord served the tenant with the Notice. A copy of the Notice is in evidence. The reason stated on the Notice for it being given is that the rental unit will be occupied by the landlord's son and wife.

The tenant argued that he opposes the Notice for two reasons: (1) it was served by email, and thus improperly, as he did not consent to the Notice being served by email; (2) the reasons for issuing the Notice are not done in good faith. In respect of the service of the Notice by email, this will be addressed below in the Analysis section of the decision.

In respect of the reasons for issuing the Notice, the tenant argued that the landlord has not been forthcoming. He referred to an email dated April 4, 2021 in which the landlord writes, *inter alia,* "[landlord's son] has already found a roommate, he needs to be assured that the place will be available." The tenant finds that this reference to a roommate raises some questions as to the landlord's intent. Further, he argued that perhaps the son and wife will move in, but that additional family relatives may then move in and rent a room. He argued that this is neither fair nor above board.

In rebuttal, the landlord argued that the roommate referred to a friend of the son's Filipino wife, and that this friend would have only stayed for a short term. In response to that submission, the tenant argued, "if additional family members are being added to the home, then what's to stop [the landlord] from renting out additional rooms?"

At the end of the hearing both parties were asked to make submissions regarding how long the tenant could remain in the rental unit, should I dismiss the tenant's application and uphold the Notice. The tenant submitted that at least three months would be a decent amount of time, while the landlord submitted that they are willing to give the tenant two months (taking into account, she added, that the tenant has had sufficient notice of this potential outcome for about four months).

Analysis

Section 44(1) of the Act lists fourteen ways in which a party to a tenancy agreement may end a tenancy.

Section 44(1)(a)(v) refers to a landlord's notice to end tenancy for use of property, which is covered in more detail in section 49(3) of the Act. This is the specific section under which the Notice was issued, and it reads as follows:

> 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.

A “close family member” is defined in section 49(1) of the Act to mean, in relation to an individual landlord, (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The standard of proof in an administrative hearing such as this one is that of 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. However, when a tenant applies to dispute a notice to end a tenancy, the onus shifts to the landlord to prove, on a balance of probabilities, the ground(s) on which the notice to end the tenancy is based. Prima facie, I find that the landlord has established the ground on which the Notice was issued. Namely, that her son and daughter-in-law intend to occupy the rental unit.

However, where a tenant disputes a notice to end a tenancy on the basis that the landlord issued the notice in bad faith – such as is the case before me – then the landlord must refute that claim and prove that the notice was issued in good faith.

“Good faith” is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. And, to reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. In this case, the tenant’s only evidence, of sorts, is a one-time reference in an email about the son’s roommate. However, there is nothing else to suggest that the son (and his wife) have any intention other than to move into and occupy the rental unit. Whether the son and his wife intend to have a “roommate,” or a family member stay with them as well, does not, I find, give rise to a situation whereby the landlord issued the Notice in good faith. Once the son and his wife move into and occupy the rental unit, there is nothing preventing them from having a family member or friend stay with them.

It would, of course, be an entirely different situation if the son and wife did not move into the rental and instead someone else (family member or not) took up occupancy. (Such a scenario may give rise to a claim by the tenant under section 51(2) of the Act for compensation.)

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of establishing that she truly intends to have her son occupy the rental unit at the end of the tenancy. I do not find that the one reference to a "roommate," or the possibility of additional family members staying with the son, give rise to a finding that there is an absence of good faith.

Last, in respect of the issue of the service of the Notice, while a notice to end tenancy should be served in compliance with section 89(1) of the Act, it is a finding of fact in this dispute that the tenant chose to regularly use his email to communicate with the landlord regarding matters of tenancy. The tenant acknowledged receiving the Notice by email, and he applied for dispute resolution after receiving the Notice. Therefore, pursuant to section 71(2)(c) of the Act, I find that the Notice, while not served in accordance with section 88 or 89, is sufficiently served for the purposes of this Act.

Given the above, and pursuant to section 55(1) of the Act, having proven the ground on which the landlord issued the Notice, and having proven that they issued the Notice in good faith, I uphold the landlord's Notice and dismiss the tenant's application.

Accordingly, the landlord is granted an order of possession. A copy of this order is issued in conjunction with this decision, and the landlord must serve a copy of the order of possession on the tenant.

Having considered and weighed the submissions of the parties regarding how soon the tenancy must end, and when the order of possession shall go into effect, it is my determination that the tenancy shall end on October 31, 2021. The landlord is correct in saying that the tenant has had four months to prepare this eventually, and the tenant appears to have a solid professional network to assist him in finding accommodation.

As the tenant was unsuccessful with their application, I must decline to award recovery of the application filing fee, pursuant to section 72 of the Act.

Conclusion

The tenant's application is hereby dismissed, without leave to reapply.

The Notice is upheld, and the effective end date of the tenancy is October 31, 2021.

To give effect to the above, I grant the landlord an order of possession, which must be served on the tenant and which is effective at 1:00 PM on October 31, 2021. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 30, 2021

Residential Tenancy Branch