



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, PSF, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing a rent increase and seeking an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord provide services or facilities required by the tenancy agreement or the law; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and the tenant was accompanied by an Advocate. The tenant and the Advocate and the landlord's agent all gave affirmed testimony and the parties were given the opportunity to question each other and the Advocate. The parties were also given the opportunity to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing I advised the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related. The parties agreed that the primary application deals with a notice to end the tenancy, and I dismissed the application disputing a rent increase and for an order that the landlord provide services or facilities agreed upon but not provided, with leave to reapply.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act*, and in good faith?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 2018 and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided as evidence for this hearing, which names a different landlord, and the landlord's agent testified that the current landlord purchased the rental unit on September 29, 2020 while the tenants resided in the rental unit. Rent in the amount of \$1,000.00 was originally payable on the 1st day of each month, which was increased to \$1,050.00 by the previous landlord. There are no rental arrears. The landlord holds a security deposit in trust in the amount of \$500.00, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the rental home.

The landlord's agent further testified that the landlord served the tenant personally with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on May 5, 2021. A copy of the Notice has been provided for this hearing and it is dated May 5, 2021 and contains an effective date of vacancy of July 5, 2021. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). It specifies: "The father or mother of the landlord or landlord's spouse."

The landlord's father and mother will be moving into the rental unit, and the landlord's father is also on title. A copy of a Land Title document has also been provided for this hearing. Presently, the landlord's father and mother live with the landlord in the upper level of the home, and 10 people live there. The landlord's mother has breathing problems and cannot go up and down the stairs in that unit without difficulty. Affidavits of the landlord's parents have also been provided for this hearing, as well as a medical note from a physician.

Having the second unit will also help for the landlord's parents to care for the landlord's children from time to time. Also, the landlord's wife is a health care worker and seeks to have a space to protect them from any exposure to COVID.

The landlord will provide the compensation required by law when the tenants move out, along with the security deposit.

The tenant's Advocate testified that the tenants do not believe that the landlord has acted in good faith, and has an ulterior motive.

Rent was \$1,052.00 in October, 2020, having been raised by the previous landlord. The current landlord asked the tenants verbally to raise rent to \$1,250.00, but the tenants could not do that and told the landlord that. On October 20, 2020, right after the tenant refused to increase the rent, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant disputed it, and a copy of the Notice of Dispute Resolution Proceeding dated November 3, 2020 has been provided for this hearing. The hearing was scheduled for January 19, 2021, however the parties settled prior to the hearing, so no one attended the hearing. The tenants agreed to pay \$1,150.00 per month, being afraid of being evicted and were not aware of the law, so they paid that.

In June, 2021 the tenant attempted to pay the landlord \$1,150.00 by cheque, but the landlord refused it saying that the rent was only \$1,052.00. Up to that point the landlord had accepted \$1,150.00 per month. The tenant's Advocate submits that it was just another thing the landlord has done to make it more difficult for the tenants. In December, 2020 the landlord refused rent from the tenant 3 times, wanting to use it as leverage to evict the tenant.

On June 10, 2021 the landlord gave the tenant a Late Rent Notice which states that the tenant failed to pay rent for the time period of December, 2020 to June, 2021 and the amount due is \$7,385.00. A copy has been provided for this hearing. The tenant responded that all rent was paid up to date.

Another verbal request was made by the landlord to increase rent in March, 2021. Basically, from January to May, 2021 the landlord said the tenant could not pay by cheque, but must pay by cash but would not give receipts. Copies of the tenant's bank statements have been provided as evidence for this hearing.

It's clear that the landlord has a history of wanting to increase rent and every time the tenant refused an increase, the landlord would issue a notice to end the tenancy or refuse rent. The tenant's Advocate submits that the landlord does not want to move his parents in, but wants a higher amount of rent which has always been an issue for the landlord.

The tenant testified that in December, 2020 he gave a rent cheque in the amount of \$1,150.00 to the landlord, payable to the landlord. The landlord refused it and wanted the tenant to leave the payee blank so the landlord could put his wife's name on it, and the tenant did so. A copy of the cheque has been provided for this hearing, and the payee is not the landlord, but was not written thereon by the tenant and has different handwriting on the payee's name than on the rest of the cheque.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a notice to end a tenancy for landlord's use of property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the notice.

In this case, I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), and I find that it is in the approved form and contains information required by the *Act*, except that the effective date of vacancy is changed to the nearest date that complies with the law. Since the Notice was given on the 5th of the month and rent is payable on the 1st day of the month, the effective date of vacancy is changed to July 31, 2021. Good faith intent is disputed by the tenant.

I have reviewed all of the evidentiary material, and I accept that the hearing scheduled for January 19, 2021 dealt with an application filed by the tenant on October 29, 2020 disputing a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant's Advocate testified that the parties settled by increasing the rent, so no one showed up for the hearing. The reason for issuing the Notice at that time was that the rental unit would be occupied by the landlord or the landlord's spouse.

The tenant has also provided a Late Rent Notice signed by the landlord and dated June 10, 2021 stating that the tenant owed rent from December, 2020 to June, 2021 in the amount of \$7,385.00. Surely, if the tenant had not paid that amount of rent, the landlord would have issued a notice to end the tenancy for unpaid rent.

I have also reviewed the Affidavits of the landlord's father and mother, as well as the note from the physician recommending that the landlord's mother move to the lower level due to health concerns.

The landlord purchased the rental home in September, 2020, almost a year ago. Since that time the landlord settled the previous dispute by agreeing to increase rent. In that case the landlord also gave a similar notice to end the tenancy, but claimed that the landlord or the landlord's spouse would occupy the rental unit.

Given the circumstances, I agree with the tenant's Advocate that increasing rent has always been an issue for the landlord, and if the landlord sincerely wanted the rental unit for his parents due to COVID and his mother's health, the landlord would not have waited a year to attempt to end the tenancy for that purpose. I am not satisfied that the

landlord has demonstrated good faith intent to use the rental unit for the purpose contained in the Notice, and I cancel it.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing it in the Provincial Court of British Columbia, Small Claims division for enforcement as a judgment.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated May 5, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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 30, 2021

Residential Tenancy Branch