



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parni Enterprises Ltd and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate, both of whom gave affirmed testimony. The landlord company was represented at the hearing by an agent, who identified himself as the owner, and also gave affirmed testimony.

The landlord has not provided any evidentiary material however the parties agree that all of the tenant's evidence has been provided to the landlord, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this tenancy began about 2 or 3 years ago and the tenant still resides in the rental unit. When the landlord took over the building, the tenant was manager and caretaker, and that ended about a month after the landlord took over in September, 2020. There is no written tenancy agreement.

Rent in the amount of \$815.00 per month is payable on the 1st day of each month and there are no rental arrears. The landlord agrees that a security deposit was transferred from previous owners, but the landlord does not know how much, however no pet damage deposit was collected. The rental unit is an apartment within 2 complexes that have 8 units each, and the landlord does not reside on the property.

The landlord further testified that a Two Month Notice to End Tenancy for Landlord's Use of Property was served on the tenant personally, but does not recall the date. A copy of the Notice has been provided for this hearing by the tenant and it is dated May 13, 2021 and contains an effective date of vacancy of July 13, 2021. The reason for issuing it states: The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. The landlord testified that he will be moving in. The landlord owns a home and his parents live with him and his mother is a cancer patient, and for other personal reasons, the landlord will reside in the rental unit. When the Notice was given, the landlord didn't know at that time if his parents or he would be moving in, but now he's decided he will move in.

The tenant's Advocate testified that this tenancy did not start 2 or 3 years ago, but in November, 2013. There were other owners at that time, and the tenant was caretaker from July, 2019 until September, 2020 after the new owners took over.

The tenant had also been served previously with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated December 12, 2020 and contains an effective date of vacancy of January 15, 2021. The reasons for issuing it state:

- Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property; the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent;
- Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.

The tenant disputed the Notice and a hearing was held on March 19, 2021. The resulting Decision dated March 24, 2021 has also been provided for this hearing. The tenant's Advocate testified that the landlord did not prove that the tenancy agreement was part of employment and the Notice was cancelled. Then on May 13, 2021 the landlord served this Notice.

There are 8 units in the building, and 7 are identical. The landlord is acting in bad faith because the tenant has been paying \$812.00 per month, not \$815.00 as the landlord

testified, and others have been rented at \$1,100.00 per month or more. That was discussed in the previous hearing, and if disputed by the landlord now, he lied.

The tenant testified that he rented 2 of the vacant units at \$1,100.00 per month when he was manager, and those that pay less have been tenants for over 20 years.

The tenant also testified that he works for himself in the construction industry, and his 2 kids work part time and go to school part time. The tenant takes this very seriously; he doesn't have the money it would take to move, and he and his kids would be homeless, which is not fair.

SUBMISSIONS OF THE LANDLORD:

The last time a notice to end the tenancy was issued, the landlord was looking for someone to manage because the landlord runs 4 businesses. The landlord's cousin was going to move in and moved his trailer onto the property. The landlord is going through a lot of different situations.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenant and Advocate do not believe that the landlord is acting in good faith. His only evidence is that he needs to move into this particular rental unit "for personal reasons."

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 Two Month Notice to End Tenancy for Landlord's Use of Property the landlord has the onus of demonstrating good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, the landlord issued a previous Notice, which was disputed, and the Arbitrator found that the landlord failed to prove that the tenancy agreement was part of employment. The landlord today testified that his cousin was going to move in. He also testified that when the Two Month Notice to End Tenancy for Landlord's Use of Property was issued, he believed his parents would be moving in, but has now changed his mind and he will reside in the rental unit. A landlord cannot change his mind, and if the landlord does so, that does not demonstrate good faith intent.

Further, to testify only that the landlord has personal reasons for moving into the rental unit does not satisfy me that the landlord has good faith intent.

Given that less than 2 months after receiving the Decision from the first hearing, the landlord issued another notice to end the tenancy, I am not satisfied that the landlord has demonstrated good faith intent, and I cancel the Notice.

Since the tenant has been successful with the application, the tenant is 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 may reduce rent for a future month by that amount, or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division 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 13, 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.

This order is final and binding and may be enforced.

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: September 16, 2021

Residential Tenancy Branch