



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

The Tenant brings two application with respect to the tenancy:

- 1) The Tenant seeks an order pursuant to s. 62 of the *Residential Tenancy Act* (the “*Act*”) that the Landlord comply with the *Act*; and
- 2) Cancellation of a Two-Month Notice to End Tenancy for the Landlord’s use of the property pursuant to s. 49 of the *Act*.

E.M. appeared on her own behalf as the Landlord. J.S. appeared on his own behalf as the Tenant and was represented by J.A. as his counsel.

At the outset of the hearing, the Tenant confirmed he was abandoning his application related to an order that the Landlord comply with the *Act* and would be proceeding strictly on the issue to cancel the Notice to End Tenancy.

Both parties affirmed to tell the truth during the hearing. The parties were given a full opportunity to be heard, to present sworn testimony, question the other party and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised that she personally served the Tenant with the Notice to End Tenancy on July 31, 2021. The Tenant acknowledged receiving the Notice to End Tenancy on July 31, 2021 from the Landlord. I find that the Notice to End Tenancy was served in accordance with s. 88 of the *Act* on July 31, 2021.

The Tenant advised that he served the Notice of Dispute Resolution and evidence by way of registered mail. A tracking receipt was provided in evidence indicating the package was sent on August 26, 2021 and delivered on August 31, 2021. The Landlord acknowledged receipt of the Notice of Dispute Resolution and the Tenant's evidence at the end of August 2021. I find that the Notice of Dispute Resolution and Tenant's evidence was served in accordance with s. 89 of the *Act* and was received by the Landlord on August 31, 2021.

The Landlord filed rebuttal evidence and personally served it on the Tenant on August 31, 2021. The Tenant acknowledged receiving the Landlord's evidence on August 31, 2021. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act* on August 31, 2021.

Issue(s) to be Decided

- 1) Whether the Two-Month Notice to End Tenancy served on July 31, 2021 should be cancelled? If not, should the Landlord be granted an order for possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

A written copy of the Tenancy Agreement was put into evidence by the Tenant. The parties confirmed that the Tenant began occupancy of the rental unit on June 1, 2020. Rent of \$1,000.00 was due on the first day of each month. The Landlord holds a security deposit of \$375.00 in trust for the Tenant.

The Landlord lives on the main level of the residential property and advised that there are two rental units in the basement, one of which is a bachelor suite and the other being the subject rental unit occupied by the Tenant.

The Landlord advised of her belief that the tenancy was for a fixed-term, with the fixed-term ending on May 31, 2021. The Tenancy Agreement includes a handwritten portion in the margins and a handwritten addendum indicating that the tenancy would end on May 31, 2021, though it does not state the reason why the tenancy must terminate at the end of the fixed-term. At the hearing, the Landlord acknowledged that she was

unaware of the formal requirements that make a fixed-term tenancy enforceable. The issue of whether the tenancy was for a fixed-term or not is not before me. However, the Landlord testified to holding a mistaken belief that the tenancy was, in fact, ending on May 31, 2021. The Landlord advised that it was her intention at the outset of the tenancy that a family member would occupy the rental unit after May 31, 2021.

The Landlord indicated that her son, who has been living with her for the past 8-years, intends to occupy the rental unit. The Landlord further advised that she is of advanced age and will be looking to have a caregiver come live with her in the future. Currently, her son is living in a room with a washer and dryer and that she has set up a treadmill and exercise bike in the room in which her son has his television. The Landlord indicated that her son has anxiety. She further indicated that her son is now at a point where he can begin to live independently, cooking his own meals, and having his own space with his own phone line.

The Tenant denies knowledge that the tenancy would end on May 31, 2021 or that a close family member would occupy the rental unit afterwards. The Tenant testified to having a good relationship with the Landlord up until an incident that took place on or about February 6, 2021 between himself and the Landlord. The Tenant acknowledged exhibiting a lack of empathy with his interactions with the Landlord on February 6, 2021 and stated his suspicion that this may have led to the issuance of the Notice to End Tenancy. The particulars of the incident were not discussed nor are they relevant to the present dispute.

The Tenant testified that it was after the argument of February 6, 2021 that the Landlord made multiple attempts to remove him from the rental unit. The Landlord denies any hostility against the Tenant and indicated that in early March 2021 she discussed the tenancy ending on May 31, 2021 as per her understanding of the terms of the Tenancy Agreement. In the Landlord's narrative, it was after broaching the topic of the tenancy ending as per her understanding of the fixed-term that the relationship between the parties' soured.

Both parties refer to a note from the Landlord to the Tenant dated March 8, 2021, which states the following:

This is to inform you that the one-year lease agreement, made and signed on May 28, 2020 to rent the one bedroom suite that you are presently living in at [XXXXXX] will run out on May 31, 2021.

This suite will not be available to you after May 31, 2021 as the lease will not be renewed.

The Tenant advised that the Landlord has previously issued notices to end tenancy for landlord's use of the property. The Tenant indicated that such a notice was provided to the current occupant of the bachelor suite, though this notice has since been rescinded by the Landlord. The Tenant did not call the tenant of the bachelor suite as a witness nor was any documentary evidence on this point provided to me.

The Tenant further advised that the Landlord made an application to the Residential Tenancy Branch for the emergency termination of the tenancy under s. 56 of the *Act*, with that application coming on for hearing on July 19, 2021. The Tenant has provided the written reasons from the previous hearing, issued on July 26, 2021. The Landlord acknowledged the previous application and indicated that she sought the relief due to the challenging relationship she had with the Tenant beginning in March 2021. She acknowledged at the hearing that her previous application was based on a misunderstanding of s. 56 and she pursued it on the basis that it provided her the means of having a hearing on an expedited basis.

The Tenant indicated that his unit is being targeted for the eviction due to the friction between he and the Landlord. The Landlord denies this and indicated that the relationship between the two soured when she insisted he move out by May 31, 2021.

The Landlord further indicated that the bachelor suite in the basement would not be suitable for her son as there is not sufficient privacy in the unit for her son and would not accommodate the goal of ensuring her son has more independence. According to the Landlord, the bachelor suite was made to accommodate her mother some time ago and is more closely integrated with the main floor, though it is a separate unit. As mentioned above, the bachelor suite is currently rented by another occupant.

The Landlord's son did not provide direct evidence at the hearing. However, the Tenant submitted a letter from the Landlord's son dated June 21, 2021, which is identified by the Tenant as a letter prepared for the previous hearing the parties had on July 19, 2021. In the letter, the Landlord's son indicates that he has been diagnosed with schizophrenia and that he needs a peaceful environment to accommodate his mental health. The son's letter mentions the following:

I am angry with [the Tenant] for the fact he, in my opinion, is provoking and instigating this conflict with my mom. He knows that my mom doesn't want him to be here and that it greatly bothers her and that she wants him to go and he seems to be enjoying the fact that it bothers her as by law he can stay.

...

If things continue the way they are I'll need to leave this home yet I have nowhere else to go where I can feel comfortable and safe. And even if I felt I'd still be impacted by what I know is going on here. So I feel trapped in the atmosphere of tension, [indiscernible], stress and anxiety. Right now I need hope that this situation and circumstances end as soon as possible. If things continue to get worse I may have to go to the hospital.

Analysis

The Tenant seeks to cancel a Two-Month Notice to End Tenancy issued pursuant to s. 49(3) of the *Act*. A landlord may end a tenancy if either the landlord or a close family member intends in good faith to occupy the rental unit. Section 49 defines a close family member as an individual's spouse, parent, or child, or the parent or child of that individual's spouse.

Rule 6.6 of the Rules of Procedure sets the following:

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the Landlord must establish, on a balance of probabilities, that the Notice to End Tenancy signed July 31, 2021 complies with the *Act*. There is no dispute that the Landlord's son is a close family member as defined by s. 49(1) of the *Act*. The principal issue is whether the Landlord has demonstrated that her son intends, in good faith, to occupy the rental unit.

Policy Guideline 2A provides guidance with respect to the good faith requirement. As stated at page 3:

In *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying 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 MHPTA or the tenancy agreement.

In this case, I acknowledge that the relationship between the Landlord and the Tenant has deteriorated since February or March 2021. The Landlord acknowledged that her application to end the tenancy through s. 56 was based on the challenges she has had with the Tenant.

I find the following dates particularly relevant:

February 6, 2021 – The Tenant and the Landlord had an argument in which the Tenant acknowledges having showed a lack of empathy.

March 8, 2021 – The Landlord writes a note indicating the tenancy is to end on May 31, 2021 in accordance with the end of the 1-year term of the Tenancy Agreement.

May 12, 2021 – The Tenant applies for an order that the Landlord comply with the Act.

June 24, 2021 – The Landlord applies for an emergency termination of the tenancy pursuant to s. 56 of the Act.

July 26, 2021 – The Landlord's application under s. 56 is dismissed.

July 31, 2021 – The Landlord issues a Two-Month Notice to End Tenancy.

The Landlord indicated in her submissions that it has been her intention since the outset of the tenancy for a family member to occupy the rental unit after May 31, 2021. That intention is not expressed in the Tenancy Agreement or the note she provided to the Tenant on March 8, 2021.

Further, I note the Tenancy Agreement, which is in the form provided by the Residential Tenancy Branch, indicates that the tenancy was to proceed on a month-to-month basis until ended in accordance with the Act. Written on the margins, it states 'ended may 31st, 2021'. I find no indication of any signature or initial by the parties indicating the Tenant agreed to this and I find the landlord failed to complete the sections C/D/E which explicitly set out that a tenancy shall end on a fixed-date for a specific reason as contemplated by the *Act*.

I place significant weight on the fact that the Landlord did not call her son as a witness to demonstrate his intentions. I also consider it relevant that the son's letter of June 21, 2021 does not mention his intention to move into the rental unit and focuses upon the conflict between the Landlord and the Tenant. If it was the Landlord's intention to move into the rental unit after the Tenant had vacated in May 31, 2021, that would conceivably been included in the letter he wrote on June 21, 2021. Instead, the Tenant's son indicates that he would need to move out of the house if the parties' conflict were to continue.

Policy Guideline 2A sets out that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. If dishonest motive is raised, as it is here, then the Landlord must demonstrate that they are acting in good faith without dishonest intent.

I cannot avoid the sequence of events over the past several months with respect to this tenancy. The Landlord sought to enforce the Tenancy Agreement's fixed-term through her note of March 8, 2021. The Landlord sought to end the tenancy under s. 56 due to the deterioration of her relationship with the Tenant. Mere days after the written reasons for the previous hearing were provided to the parties, the Landlord issued the subject Notice to End Tenancy for Landlord's use of the rental unit. No mention is made in the Tenancy Agreement, the Landlord's note of March 8, 2021, or the son's letter of June 21, 2021 that the Landlord, her son, or a generalized comment that a family member intended to occupy the rental unit at all.

I accept that the current Notice to End Tenancy was issued in direct response to the Landlord's previous attempts to remove the Tenant and that the Tenant is likely being targeted due to the challenging relationship he has with the Landlord. I find that the Landlord has failed to demonstrate that her son intends, in good faith, to occupy the rental unit.

Conclusion

The Two-Month Notice to End Tenancy signed on July 31, 2021 is hereby cancelled and the tenancy will continue until it is ended in accordance with the *Act*.

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 29, 2021

Residential Tenancy Branch