



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice").

Both the landlord and the tenant appeared for the hearing and the parties were affirmed.

Preliminary and Procedural Matters

The tenant acknowledged he was making an audio recoding of the proceeding. Doing so is a violation of the Rules of Procedure and I ordered him to cease. The tenant affirmed that he stopped recording.

From the outset of the hearing the tenant presented in a hostile manner, asserting: the landlord is lying even though the landlord had yet to make any statements; the Residential Tenancy Branch (RTB) is corrupt; collusion between landlords and the RTB and the Supreme Court, that Arbitrators are biased, among other things. I instructed the tenant to cease speaking out of turn and over me and when he did not, I muted his line. I proceeded to inform the parties that inappropriate conduct during the hearing, including interruptions and outbursts and antagonistic behaviour, would not be tolerated and that under the Rules of Procedure a party that does not comply with my instructions may be excluded from the proceeding. When I unmuted the tenant's telephone line, he indicated he understood what I had said and that it would be a good idea if I muted his line whenever it is not his turn to speak as he would likely have difficulty controlling his outbursts. For the remainder of the hearing, the tenant's line was usually muted when it was not his turn to speak. Even when it was his turn to speak the tenant would often use the opportunity to voice his opinions rather than respond to the question asked of him or to present facts. As a result, this hearing was exceedingly frustrating and lengthy in trying to extract sufficient information to make a decision. Despite the tenant's poor

conduct and the unnecessarily lengthy proceeding, the landlord exhibited great patience and tolerance of the tenant's conduct as exhibited by restricting his submissions to those relevant to the hearing, not interrupting or otherwise engaging with the tenant.

As for service of hearing materials, the tenant testified that he sent the proceeding package to the landlord within three days of filing, via registered mail. The tenant testified that he sent an evidence package on a USB stick to the landlord via registered mail on September 24, 2021, and delivered another copy to the landlord in person on September 29, 2021. The landlord confirmed receipt of the proceeding package and the tenant's evidence package on the USB stick.

The tenant acknowledged that he did not confirm with the landlord that the landlord was able to access and view or hear the content on the USB stick. The landlord stated he did not even attempt to access the tenant's digital evidence.

Where a party serves the other party with digital evidence, it is upon the party serving digital evidence to confirm the other party can access, see, or hear the content on the digital device, pursuant to Rule 3.10.5 of the Rules of Procedure. The tenant did not make any attempt to confirm the landlord could see or hear the content on the USB stick. Thus, I did not admit the tenant's digital evidence for consideration in making this decision. The landlord confirmed that he had not provide any evidence prior to the proceeding and that he intended to provide his position orally during the hearing. Therefore, the evidence I have considered in making this decision is oral testimony only.

I noted that the Notice of Dispute Resolution Proceeding prepared by the Residential Tenancy Branch indicates the tenant was disputing a *One Month Notice to End Tenancy for Cause* posted to the door on June 1, 2021; however, both parties indicated that a One Month Notice was not served. Rather, a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") was issued on May 31, 2021 and posted to the tenant's door on May 31, 2021. Both parties stated they understood this hearing was to deal with the tenant's dispute of the 2 Month Notice and were prepared to make submissions concerning the 2 Month Notice. I turned to the manual Application for Dispute Resolution prepared by the tenant and I noted that the tenant had indicated he was disputing a 2 Month Notice. As such, I was of the view that an error was made when the Application for Dispute Resolution was entered into the Residential Tenancy Branch system and since both parties were prepared to deal with a disputed 2 Month Notice, I amended the Residential Tenancy Branch records accordingly.

I noted that I did not have a copy of the 2 Month Notice in the records before me. The tenant testified that he had delivered it to the Residential Tenancy Branch with his Application for Dispute Resolution. The landlord stated that it was included in the package the tenant sent to him via registered mail. I permitted the parties to read the content of the 2 Month Notice into evidence and the parties were in agreement as to its content.

Issue(s) to be Decided

1. Should the *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") be upheld or cancelled?
2. If the 2 Month Notice is upheld, is the landlord entitled to an Order of Possession?

Background and Evidence

Under an oral agreement, the tenancy started in the summer of 2018. The tenant is required to pay rent of \$500.00 per month although I heard that the tenant also performs work for the landlord, such as lawn cutting on two adjacent properties, and his pay is often deducted from the tenant's rent obligation.

The rental unit was described as being in the basement level of the house where the landlord lives with his wife, daughter, and mother-in-law. The rental unit has a living area, bedroom area and a two piece bathroom. Kitchen facilities are not provided but the tenant brought in his own fridge and hot plate for preparing meals. The rental unit has its own separate entrance and a lockable interior door separates the rental unit from the main part of the house. The parties confirmed that they do not share kitchen or bathroom facilities.

The landlord testified that he is the sole registered owner of the property and he issued a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") to the tenant on May 31, 2021. In completing the section that provides for the reason for ending the tenancy, the parties provided consistent testimony that the landlord indicated the rental unit will be occupied by the "father or mother of the landlord or landlord's spouse".

The 2 Month Notice was posted to the tenant's door on May 31, 2021 and the tenant received it on June 1, 2021. The tenant filed to dispute the 2 Month Notice on June 14, 2021 which is within the time limit for doing so.

Landlord's position

The landlord stated that he may be selling the property in the near future although that date is uncertain and may be two years from now. The property is likely going to be developed into townhouses, which would include demolition of the existing house, but in order to proceed with the development the property may be sold to a developer, including a family owned corporation. Until such time the property is sold or developed, the landlord seeks to cease renting the basement unit to the tenant and the landlord asserts he will not re-rent the unit to anybody else. The landlord described his reasons for seeking to end the tenancy with the tenant as being two-fold:

1. The landlord and his wife intend to have more than the one child they currently have and they will be without sufficient space in the main part of the house.
2. The relationship with the tenant has broken down and is no longer tenable. The tenant is very difficult to talk to and is acting aggressively toward the landlord and his family. The landlord submitted that the tenant often taunts the landlord with derogatory and misogynistic comments and adversarial text messages. After receiving the 2 Month Notice the tenant reacted by repeated slamming the door resulting in the landlord calling the police. The landlord stated that the cause the tenant has given the landlord is very connected to the landlord's reason for wanting to end the tenancy for landlord's use. The rent payable by the tenant is low and the landlord had continued the tenancy up until now because the tenant was helpful around the property but with the tenant's increasingly aggressive conduct toward him and his family the landlord no longer wants to rent the space to the tenant.

The landlord also stated that the tenant has not paid rent since June 2021 but the landlord has not pursued ending the tenancy for unpaid rent. The landlord also stated that when he called the police on June 1, 2021, he was informed of his right to end the tenancy for cause but the landlord has not pursued that either. Rather, the landlord was open to reaching a mutual agreement to end tenancy with the tenant, including waiver of rent payable. The tenant responded that he was not interested in reaching a mutual agreement to end tenancy.

Tenant's position

The tenant was of the position that the landlord issued the 2 Month Notice in retaliation for him saying "no" to the landlord on one occasion in mid-May 2021 whereas the tenant

had always complied with the landlord's requests in the past. The tenant described how the landlord's mother-in-law was going to have manure dumped on or near the walkway to his unit and the tenant got angry and demanded that the manure be dumped further away. The tenant acknowledged yelling and using profanity. The landlord got involved and the landlord agreed to have the manure dumped elsewhere.

The tenant appeared to take offense that instead of thanking him for bringing the manure situation to his attention the landlord took issue with how the tenant yelled and swore at his mother-in-law. The tenant testified that after this incident involving the dumping of manure the landlord told the tenant he would give the tenant an eviction notice, which was followed by issuance of the subject 2 Month Notice.

The tenant was of the position the landlord's mother-in-law has no intention to move into the basement especially considering the landlord's mother-in-law already resides upstairs in a space that spans nearly one of the three upper floors.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The parties read into evidence the content of the 2 Month Notice served to the tenant and given their consistent description, I accept that it was duly completed and in the approved form.

The reason indicated on the 2 Month Notice issued on May 31, 2021 is consistent with section 47(3) of the Act which provides that a landlord may end a tenancy where:

(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.

Section 47 of the Act defines "close family member" to include a landlord's father, mother or the father or mother of the landlord's spouse.

Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides, in part:

B. GOOD FAITH

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 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)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

In issuing the subject 2 Month Notice to the tenant, the landlord indicated that he was seeking to end the tenancy so that his father, mother or the father or mother of his spouse may occupy the rental unit.

In order to establish the tenancy should end, the landlord must prove, on a balance of probabilities, not only that his parent or his parent in-law will occupy the rental, for at least six months after the tenancy ends, but that the landlord has no ulterior motive to end the tenancy.

In this case, the landlord did not state who would be occupying the rental unit if the tenancy were ended or that it would be occupied by this person for at least six months, especially considering ownership of the property may be changing in the near future. The tenant appears to have assumed it would be the landlord's mother-in-law but the landlord did not confirm or deny the accuracy of that assumption. The tenant stated the landlord's mother-in-law already resides in a more spacious place upstairs and doubted the landlord's mother-in-law would move into the smaller basement area he occupies. The landlord did not call his parent or parent-in-law to testify as to their intentions to occupy the rental unit for at least six months.

The landlord provided a submission during the tenancy that if the family grows, he will require more space, which is understandable; however, the landlord did not elaborate as to how the rental unit space would be used and by whom.

In light of the above, I find the tenant called into question the landlord's intention to have the rental unit occupied by his parent or parent in-law and I find the landlord did not meet his burden to prove that the rental unit would be occupied by his parent or parent in-law after the tenancy ends, as indicated on the 2 Month Notice, for at least six months. Therefore, I cancel the 2 Month Notice with the effect that the tenancy continues at this time.

Although the landlord pointed to the tenant not paying rent and acting aggressively toward the landlord and his family, the only matter before me is the 2 Month Notice dated May 31, 2021. The landlord remains at liberty to pursue ending of the tenancy for unpaid rent or cause, or both, as appropriate in the circumstance. I encourage the parties to familiarize themselves with their respective rights and obligations under the Act. Information may be obtained from the Residential Tenancy Branch website and/or by contacting an Information Officer with the Residential Tenancy Branch, and/or by seeking their own independent legal advice.

Conclusion

The 2 Month Notice dated May 31, 2021 is cancelled and the tenancy continues at this time.

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: October 20, 2021