



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”).

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not recording this hearing in compliance with Rule 6.11.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on October 1, 2010. Current rent in the amount of \$1,227.07 was payable on the first of each month. The tenant paid a security deposit of \$425.00. The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2021.

The reason stated in the Notice was that:

- The rental unit will be occupied by the child of the landlord or spouse; and

- The landlord is a family corporation and a person owning voting shares in the corporation, or close family member of that person, intends in good faith to occupy the premise.

Legal Counsel for the landlord stated that the property owner is a family corporation and PK owns 100% of the shares. Legal counsel for the landlord states that the landlord wants the property for their 28-year-old son, so he can complete his training to become a flight instructor and recover from a traumatic assault that occurred on June 27, 2021.

Legal Counsel for the landlord submitted that the landlord's selected the tenant's unit because it was on the ground floor and is a one-bedroom apartment, which meets the needs of the landlord's son, which includes his future medical needs due to the assault.

Legal counsel for the landlord submits that the other one-bedroom units on the ground floor are either under a fixed term tenancy or that they have children and they determined that it would be better to displace one tenant, rather than a family.

The tenant testified that they do not believe that the landlord in "good faith" has issued the Notice. The tenant stated that the landlord has been harassing them for over a year and a half.

The tenant testified that they have never had issues during their tenancy until February 2020, when an inspection was done on their rental unit. The tenant stated that during that inspection the building manager told them that they would do anything to evict them. Filed in evidence is a video, which I do not hear the building manager saying such words.

The tenant testified that as a result of the inspection they received a warning letter dated February 27, 2020, to remove the vinyl flooring which they believed they were entitled to install; however, they did remove the flooring. A copy of the letter was filed in evidence.

The tenant testified that on September 4, 2020 they received a harassing letter from the landlord's legal counsel to remove the outdoor string lights they had attached to the building. The tenant stated these were proper outdoor lights. A copy of the letter was filed in evidence.

The tenant testified that they received another letter on September 18, 2020, regarding their conduct towards the building manager, which is untrue. Filed in evidence is a copy of the letter.

The tenant testified that they also were served with a 10 Day Notice to End Tenancy for Unpaid Rent, issued on July 2, 2020. The tenant stated that there was no reason for the landlord to issue the notice because the landlord's office could have informed them that they had run out of postdate cheques.

The tenant testified that also the Notice is dated June 25, 2021, before the landlord's son was assaulted.

The tenant submits through their application that the landlord also harassed their witness that provided witness statements by contacting them.

The landlord's agent testified that they issued the Notice on June 27, 2021 and they served it on June 28, 2021. The agent stated that this simply must have been a typing error as they had the discussion with the landlord on June 27, 2021, after their son was assaulted.

Landlord's agent testified that they were only dealing with issues with the tenant that are related to the tenancy. The agent stated at the inspection in February 2020 they were concerned with the tenant placing vinyl floor over the existing flooring as it could cause damage and cause mould to the floor below. The agent stated that they believed this to be a breach of the tenancy agreement. The agent stated at the inspection the tenant became upset and was constantly swearing and threw the flooring. Filed in evidence is a copy of the video which supports the tenant was upset and swearing.

Landlord's agent testified that their insurance company attended the building for an inspection, and they discovered the tenant had attached outdoor string lights to the underside of the upper balcony. The agent stated that this was an issue with their insurance company and contrary to term 27 of the tenancy agreement and that is why they asked them to be removed. Filed in evidence is a photograph of the lights.

Landlord's agent testified that they issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, on July 2, 2020 because rent was not paid on the date it was due and this is just normal business practise. Filed in evidence is a copy of the notice to end tenancy.

The landlord's agent testified that the above cannot be considered harassment as they were entitled to issue warning letters when they believe the tenancy agreement has been breached or when rent is not paid on the date it was due.

The landlord's agent testified that the landlord has no ulterior motive, and that the tenant's rent is not an issue. The agent stated the tenant's rent is comparable to other rent within the building. Filed in evidence is a copy of the rent roll.

The landlord's agent testified that they contacted the tenant's witnesses simply to clarify what they wrote. Filed in evidence are recordings of these interactions.

The landlord's witness HA testified that they are the son of the landlord and was a commercial pilot in Ontario and was laid off work due to Covid-19. HA stated that they had moved back to British Columbia to further enhance their career by enrolling in flight instructor school that started on September 13, 2021 and is expected to end in April 2022. Filed in evidence is a confirmation of enrollment.

HA testified that on June 27, 2021 he was stabbed multiple times and had significant injuries, which he needs special equipment to help with this therapy to recover. HA stated that his mother, the owner, has agreed to allow him to live in the rental unit to help him while he attends school and recovers from his injuries. HA stated that he is 28 years old and needs his own living accommodations. Filed in evidence are multiple medical reports.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I do not find by the landlord contacting the occupants that have written in letters for the tenant, harassment of a witness. Had those same occupants attended the hearing and provide testimony, the landlord would have been entitled to cross-examine them at the hearing.

In this case, I have reviewed the Notice and the Notice complies with section 52 of the Act. While there was an issue with the date it was dated June 25, 2021. I accept this simply could have been a typing error and meant to have been the 27th of June, as it was not served until the 28th of June.

The tenant has raised the issue of “good faith”. Residential Tenancy Policy Guideline 2A, states the following.

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.

I have reviewed the past history of the parties, which appeared to have started in February 2020 and ended in September 2020. I cannot find this past history constitutes harassment of the tenant or that this leads me to believe there is an ulterior motive to end the tenancy because the only issues raised were related to allegations of the tenant breaching the tenancy agreement, which I find had some merit as the tenant had installed flooring and had strung lights attaching to the upper balcony. The tenant also had not paid rent on July 1, 2020 when rent was due.

Under the Act, the landlord has the right to issue warning letters and to issue a notice to end tenancy when there is merit to them. I also note in the videos provided by both parties that the landlord clearly said they did not want to evict the tenant only to have the tenant comply with the tenancy agreement, which the tenant did.

Further, there is no evidence before me that the landlord is attempting to avoid their obligations under the Act, such as not wanting to maintain the rental unit.

While the tenant refers to their rent being grandfathered, and they are being harassed because of their lower rent; however, there is no evidence of this before me. In the video provided by the tenant at the inspection in February 2020, when the tenant

alleged harassment due to lower rent, the landlord clearly said the inspection of the rental unit had nothing to do with rent. I note the landlord was unaware that they were being recorded.

I have further reviewed the list of current comparable rents filed in evidence by the landlord. The tenant is not paying a significantly lower rent than the other occupants of the building, as there are at least four other units that are paying a lower rent than the tenant. If the motive for ending the tenancy was solely to obtain a higher rent, it would have been reasonable that the landlord would have selected the lowest rent paid in the building. Not the tenant's where their rent falls in between the comparable rents paid. Therefore, I cannot find that the motive for ending the tenancy is to re-rent the premises for a higher rent.

I have also considered whether there was another comparable unit that was vacant at the time the Notice was issued and could have been occupied by the landlord's son. While there was one rental unit on the second floor for rent at that time. However, that was determined not suitable due to the medical injuries of the landlord's son, which required him to be on a ground floor this was to limit his walking and to provide heavy therapy equipment. This is supported by the medical evidence. I find this is a reasonable explanation that this rental unit was not considered suitable.

In this case, the landlord's 28 years old son lived in Ontario and lost their job as a commercial pilot due to Covid-19, and move to British Columbia with the intentions of attending school to become a flight instructor which that training was to start on September 13, 2021, which is shortly after the effective date of the Notice. I find this alone would be sufficient to end the tenancy as it is not unreasonable that the landlord would accommodate their adult son by providing housing while attending school.

The landlord's son was also brutally attacked and suffered significant injury and it is not unreasonable that the landlord selected a rental unit that was on the ground floor to help with his recovery.

Although I have heard extensive testimony on the equipment needed to assist the landlord's son with recovery, I do not believe that the landlord would have known this at the time they issued the Notice. However, the landlord had known their son would be attending school and knew of the significant injuries at that time and had the right to issue the Notice, for the reasons stated, regardless if special equipment may be needed or known to them at the time.

I accept the evidence before me that the landlord's son will be living in the rental unit, while attending school and recovering from his injuries.

I find the Notice has been proven by the landlord, was issued in good faith, and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlord has accepted occupancy rent for the month of November 2021, I find it appropriate to extend the effective vacancy date in the Notice to November 30, 2021, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date. This Order may be enforced in Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: November 15, 2021

Residential Tenancy Branch