



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with four applications from the tenants of a rental property each seeking cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Residential Tenancy Act* (the "Act") and to recover their filing fee from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member and represented by counsel.

At the outset of the hearing the landlord said they had entered into settlement agreements with the applicants from Units 202 and 203. After confirming they had entered a settlement and its terms, the tenants of those units were excused from the balance of the hearing. Those two applications are withdrawn and pursuant to the agreements between the parties, Orders of Possession effective January 31, 2022 are issued in the landlord's favour.

The landlord and the tenants of Units 201 and 301 each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notices be cancelled? If not is the landlord entitled to Orders of Possession?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The rental property is a character home consisting of 6 separate rental units located on three floors and the basement. The 4 units for which the landlord issued the Notices to End Tenancy are located on the second and third floor of the building. Each of the units is self contained with its own bathroom and kitchen facilities. The landlord purchased the property in August 2021 and issued the 2 Month Notices to each of the units on the second floor. Copies of the notices were submitted into evidence.

The reason provided on the notices for the tenancy for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit. The landlord testified that they and their spouse intend to occupy all 4 of the rental units as their residence.

The tenants confirmed receipt of the 2 Month Notices on August 27, 2021 and August 29, 2021 and have filed applications to dispute on September 8, 2021 and September 9, 2021. The tenants submit that they do not believe that the landlord and their spouse can occupy all 4 rental units. The tenants submit that it is unlikely that a married couple will inhabit separate suites for ordinary residential purposes. The tenants say that it is more likely that the landlord is motivated by a desire to increase their rental income by ending the present tenancies and finding new occupants. The tenants further submit that the larger single unit found on the first floor would be more appropriate for a married couple.

The landlord gave detailed and lengthy testimony about their reasons for issuing the 2 Month Notices to the 4 rental units. The landlord is currently living a short distance away from the rental building in the same neighborhood. The landlord submits that they have lived at their present address for approximately 4 years and have lived in the same neighborhood for about 35 years.

The landlord purchased the rental property in August 2021 as they were familiar with the neighborhood and found the layout of the rental building to fit their need for privacy and space.

The landlord gave evidence that their current residence is on the first floor and consists of approximately 1,600 square feet. The landlord and their spouse testified that they find the amount of space to be insufficient for two individuals and believe that the approximately 2,400 square feet provided cumulatively in the 4 rental units is ideal. The landlord submitted into documentary evidence photographs of their current living space, showing a large number of personal items. The landlord submits that they have additional possessions in storage that they hope to use to furnish the 4 rental units. The landlord provided into evidence of items they have in storage that they intend to use in the rental units.

The landlord gave detailed testimony about their preference for residing in residences with sufficient space and private bathrooms and bedrooms. The landlord testified that they have used this format of co-habiting with their former spouse, current spouse and children in the past. The landlord submits that occupying the 4 rental units is ideal as they will be provided privacy and their own facilities while sharing some living space with their spouse. The landlord explained that simply having a larger unit is not preferable as it would not afford private facilities and space. The landlord testified that their intention is to keep the 4 rental units separate and occupy all of them as their combined residence.

The landlord submitted into documentary evidence affidavits and statements from witnesses including their adult children, family members and associates stating that the landlord has traditionally lived in this manner with their own dedicated private space and facilities.

Floorplans of the rental building with the landlord's notes about how they intend to use the space was submitted into evidence. The landlord submits that there are a number of ways they will use the space for residential purposes including using part of the space for home offices. Both the landlord and their spouse currently work from home and testified that they intend to use a portion of the rental units as home offices. They gave detailed testimony about the need for additional space to meet with clients safely given the ongoing Covid19 pandemic and the current medical evidence that there are higher rates of transmission in close proximity. The landlord's spouse testified about the need for privacy for their clients and how the current layout of the rental units will provide them with the privacy and space necessary. The landlord clarified that these home offices will be part of their residential space and they are not intending to use any one rental unit as a dedicated commercial space.

The landlord and their spouse gave some testimony about how they feel the neighborhood has seen an increase in property crimes. The landlord complained about the potential danger and submits that the second and third floor location of the rental units will provide them with greater peace of mind.

The landlord submits that they have sufficient assets and means so as to not require any additional rental income. The landlord has purchased the rental property outright and submitted into evidence a copy of the Title Search showing no mortgages or encumbrances.

Analysis

Pursuant to section 49(8)(a) a tenant may dispute a Notice to End Tenancy for Landlord's Use by filing an application for dispute resolution within 15 days of receipt of the notice. In the present case the tenants submit they received the 2 Month Notice on August 29, 2021 and August 27, 2021 and filed their application to dispute the notice on September 9, 2021 and September 8, 2021 respectively. Therefore, I find the tenants were within the timeline provided.

When a tenant disputes a notice, the onus shifts to the landlord, to demonstrate on a balance of probabilities that the tenancy should end for the reasons provided on the notice.

The tenant raised the issue of the good faith intention of the landlord.

Residential Tenancy Branch Policy Guideline 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The reason provided on each of the notices for the tenancy to end is that the landlord and their spouse intend to occupy the rental units for which they have issued 2 Month Notices.

Based on the totality of the evidence of the parties I find the landlord has met their burden on a balance of probabilities. I find there is an overwhelming preponderance of evidence in support of the landlord's stated intentions. The submissions of the landlord, their past conduct, and the surrounding circumstances are all consistent and support the landlord's good faith intention to occupy the rental units with no ulterior motive.

I find that both the landlord and their spouse gave cogent, consistent testimony supported in their documentary materials. The landlord addressed each of the concerns raised by the tenants in their submissions and provided an internally consistent explanation of their motivations and intended use. While a married couple occupying several separate adjoining suites is an atypical living situation, based on the evidence I am satisfied that this is the preferred arrangement for the landlord and their spouse and that this has been successful for many years. The landlord provided undisputed evidence that they have utilized this separated living arrangement for over 40 years, with their first spouse and subsequently with their current spouse. I find the explanation of the landlord and their spouse and the written statements of their witnesses to be sufficient to find that the landlord has lived in intends to occupy all 4 of the rental units for residential purposes in their present state rather than perform renovations to combine them into one unit.

Similarly, while the landlord's stated need for more than 2 separate bathrooms and over 2,400 square feet of space for 2 occupants would reasonably be seen to be excessive, based on the evidence I find that the landlord genuinely believes that this is necessary and intends to use these facilities for ordinary residential use. The landlord provided detailed plans of how they intend to use the 4 rental units as their residence including the use of part of the space for home offices and taking items out of storage to furnish the space. The landlord also testified as to their intended use of the multiple bathrooms and kitchen facilities. Based on the detailed and consistent testimonies I am satisfied that the landlord and their spouse will occupy all 4 of the rental units for ordinary residential use.

Koyanagi v. Lewis, 2021 BCSC 2062 at para 30 provides that:

Using a space within a residence for a home office is using it as part of the living space. Home offices are a common feature of a residence, especially, though certainly not exclusively, since the COVID-19 pandemic. Simply because a space in the home is being used as a home office does not mean the space is not being used as part of a living accommodation or living space.

I find the present situation is similar to that contemplated in *Koyanagi v. Lewis* where the landlord intends to use a portion of the 4 residential units as home offices for both themselves and their spouse. I am satisfied based on the testimonies and the proposed floor plan that these are portions of the living space used at times as offices rather than using one of the suites as a dedicated commercial space adjacent to the living space. As in any living space occupied for residential purposes some areas may get more use than others. Nevertheless, I am satisfied that the landlord intends to use all of the 4 rental units for ordinary residential purposes as part of their living space.

The landlord gave detailed explanation of why these 4 units are ideal including the geographic location of the rental property in the same neighborhood as their current residence, the second and third floor position of the suites providing a sense of security to the landlord, and the floorplan allowing the landlord and their spouse privacy and the amount of space they believe is necessary. I am satisfied, based on the landlord's evidence of their income, assets and ownership of multiple properties, that increasing their rental income from these suites is not a motivation for their issuance of the 2 Month Notices.

It is beyond the scope of this Branch and the *Act* to make determinations on what amount of space is sufficient for individuals to occupy or what living arrangements are appropriate. While the proposed use of the 4 rental units by the landlord is unusual and

the amount of space they intend to occupy is considerable given the number of family members, I am satisfied that the landlord genuinely intends to use the suites in the manner they propose without ulterior motivations.

The landlord has met their evidentiary onus to establish that they intend to use the rental units for the purpose stated on the 2 Month Notices. I am satisfied that there is no ulterior motive. While I agree with the tenants' submissions that the intended use is excessive, indulgent and removing 4 individual rental units from the rental market for the convenience of 2 individuals during an ongoing provincial housing crisis is highhanded and self-indulgent, I find the landlord has met their burden to establish their good faith intention of the 2 Month Notice.

Consequently, I dismiss the tenants' application to cancel the landlord's 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

I have dismissed the tenants' applications and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, as it is in the prescribed form, is signed and dated by the landlord, identifies each of the addresses and provides the reason for the tenancy to end. Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the notices has passed, I issue an order enforceable 2 days after service on the tenants.

Conclusion

The applications for Units 202 and 203 are withdrawn and dismissed without leave to reapply. Pursuant to the agreement between the parties I issue an Order of Possession to the landlord for each of those Units effective **12:00PM on January 31, 2022**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The applications for Unites 201 and 301 are dismissed without leave to reapply. I grant an Order of Possession to the landlord for these 2 units effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 27, 2022

Residential Tenancy Branch