



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant RH: CNL, FFT
 Tenant SL: CNL, FFT
 Tenant SM: CNL
 Tenant JH: CNL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear four tenant applications that were joined because all of the Tenants filed applications naming the same respondent Landlord and Purchaser, RW and XG, respectively.

Each of the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's use of Property (Two Month Notice). Tenants RH and SL also applied to recover their filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The advocate for the Tenants stated that on December 1, 2021, she served the Tenants' Notices of Dispute Resolution Proceeding (NDRP) on the Landlords by registered mail. The advocate stated that on December 23, 2021, she served the Tenants' evidence on the Landlords by registered mail. The Landlords confirmed receipt of the Tenants' documents. I find the Tenants served the Landlords in accordance with section 89 of the Act.

The Landlords stated that they served their responsive evidence on the Tenants by sending it to the advocate by registered mail "in late December." The advocate acknowledged receipt of the responsive evidence, stating "it was received in good time." I find the Landlords served the Tenants in accordance with section 88 of the Act.

Preliminary Matters

At the beginning of the hearing both parties agreed to add Purchaser XG as a respondent, and I have amended the applications accordingly.

Tenant SL did not attend the hearing; the advocate advised that SL had decided to accept the Notice and move out, and wishes to be withdrawn from the proceedings. The Purchaser XG testified he is seeking an order of possession for SL's rental unit even though she has agreed to move out. Pursuant to Rule of Procedure 5.0.1. the Tenant needs the landlord's consent to withdraw her application. I decline to allow SL to withdraw her application.

Issues to be Decided

- 1) Should the three Two Month Notices be cancelled?
- 2) If so, is the Landlord entitled to orders of possession?
- 3) Are Tenants RH and SL entitled to their filing fees?

Background and Evidence

Regarding RH's tenancy, the parties agreed it began in August 2020 and that rent is \$786.94, due on the first of the month. Neither the Tenant nor the Landlord was sure of the amount of the security deposit paid by the Tenant. The Landlord confirmed they still hold the security deposit.

Regarding SM's tenancy, the parties agreed it began 14.5 years ago; rent is \$840.00, due on the first of the month; and SM paid a security deposit of \$375.00, which the Landlord still holds.

Regarding JH's tenancy, the parties agreed it began 19 or 20 years ago; rent is \$730.73, due on the first; and JH paid a security deposit of \$325.00, which the Landlord still holds.

RH, SM, and JH testified they were each served their Two Month Notice on October 26, 2021 in person. The proof of service submitted by RW indicates that SL's Two Month Notice was served on the same date, in person. Each of the four Two Month Notices state that the reason the tenancy is ending is: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to

give this Notice because the purchaser of a close family member intends in good faith to occupy the rental unit.” The effective date on the Notices is January 6, 2022.

Purchaser XG testified that his family is from another province, and that both of his daughters moved to the city in which the rental property is located last September to attend university. XG testified that he and his wife intend to move to the city for the following reasons: they have no other children; the family has no other roots in the province in which they currently reside; and, as XG and his wife approach retirement age, they are finding the weather where they currently live more uncomfortable, and seek a warmer climate.

Purchaser XG testified that he plans for each of his two daughters to use one of the units, and he plans to use the two lower units, as each is too small on its own. One side he and his wife will use for sleeping and eating, and he will create a home office space, and perhaps a home gym, in the remaining unit. XG submitted that as the units are internally connected, he would not have to go outside if he ends work late.

Purchaser XG provided a written submission, in which he states he works in the IT industry and works remotely full time. The submission states: “This building with multiple units give my family a chance to live together and yet have relative individual privacies, given that my children are all adults now.”

In response to title search evidence submitted by the Tenants, XG testified he does not own property in BC.

The Landlords submitted as evidence a document titled “Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession,” which notes that: all conditions for the sale of the property have been satisfied or waived, the purchaser is asking the landlord to give the tenants notice under section 49 of the Act (*Landlord’s notice: landlord’s use of property*), and the purchaser “(or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation ... voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.”

In response to questions from the Tenants’ advocate, XG testified that:

- His daughters attend a university in the same city as the rental unit, and one is currently living in a dorm on campus, and the other is living in a basement unit near the university;
- He has not visited the subject property;

- He had a home inspection done on the property, which gave him a sense of its condition;
- The inspection report indicated that the property was old, but identified no major issues;
- While he plans to make improvements such as replacing carpet and toilets, and cleaning up, he is not aware of any structural problems;
- He did not have a video tour of the upper floor units, but asked a friend to provide him with photos and videos of the property; and
- His daughters have not seen the subject property, are aware of the commute to the university, and are not attending the hearing.

SM testified that:

- Her unit is a large two-bedroom unit with a 400 square foot deck;
- The unit is very run down;
- The building is settling in the back, so the floor is uneven and the doors and windows are “wonky”;
- RW said that it is a “teardown,” and that he was “just hanging on, waiting for a developer to come along”;
- She must spray against black mold, as the house doesn’t breathe properly;
- The plumbing is old;
- Not much repair and maintenance has been done;
- The deck railing was replaced after someone almost fell through, and the exterior stairs were fixed in 2019 after she fell through them;
- Rent has stayed very affordable;
- Much of the neighbourhood is being torn down, including the house on the corner;
- The entire block across the street has been rezoned;
- There is so much development in the neighbourhood because the city has slated it as a transit-oriented neighbourhood;
- The location is close to a college, the Skytrain, and a mall; and
- No one who viewed the unit asked about what it was like to live there, or about the neighbourhood.

RH testified that:

- From hearing SM's description of her unit, his is similar in condition;
- He gets condensation in his windows;
- The electrical breaker "goes" if too many appliances are operating at once;
- There is a gap under the door, such that in winter he has to put a towel there;
- Not much repair and maintenance has been done;
- He wanted a new door, but that would have taken reframing;
- He hasn't really asked RW to do anything;
- He talked to RW's relator, who said that about three groups of relators visited during the 3-hour afternoon showing, and each group was "in and out";
- He found an ad for the property on a BC condos website, showing only exterior photographs of the property, and marketing the property to investors and builders;
- He thinks the property has been sold to a developer because "it's a teardown," and the property needs so much work it seems illogical for someone to purchase it to move in;
- He has stayed in the unit for a long time because he likes the area and the rent is very reasonable;
- The building is moldy and drafty; and
- It doesn't seem likely that "university girls" would want to live there.

In reply to a question from Purchaser XG, Tenants SM and RH said they did not file complaints with the Residential Tenancy Branch regarding the condition of the property.

Purchaser XG stated that based on SM's and RH's testimony, the property sounds almost uninhabitable, and he asked SM and RH why they stay. RH responded that the property is not uninhabitable; it just has a lot of deficits, which he is prepared to live with, knowing that it will be a teardown. RH testified that he did not want to "make things tough" on Landlord RW, thereby pushing him to the point of selling. RH testified that the three tenants have lived there for many years, work in the area, and the rent is reasonable.

SM testified that the property is a teardown, and there is an unwritten rule to not complain, so as to keep things inexpensive for the Landlord, and therefore for the Tenants as well.

Purchaser XG asked those present if anyone was aware of a plan for the property to be torn down in the next four to six months. Landlord RW testified that the landlord has not

submitted a redevelopment plan, and that to apply, one must put up a large sign. RW submitted there are some land assemblies in the area, but not many “sold” signs.

Purchaser XG submitted that the seller or their representative advertises a property, and that a buyer has no control over how a seller wishes to portray a property.

Regarding the distance to the university, Purchaser XG said it is “not so bad,” testifying that the family is used to driving 30 to 40 minutes to get to places in and around the large city they currently reside in. XG testified that he had checked Google Maps, finding that it would take his daughters about an hour to commute to the university, and that the commute was a compromise his daughters were willing to make. XG also noted that university students do not have classes every day. He submitted that with the move, his daughters are looking forward to having their own cars. XG submitted that while one of his daughters is currently living in a school dorm, it is not possible to secure dorm housing after “about” the first year. As for his other daughter, XG submitted that she does not want to live in a basement anymore.

The Tenants submitted that the commute to the university would likely take longer than about an hour, that it would take up to approximately one hour and 45 minutes.

XG submitted that he likes the area the property is in as it is close to nature and walking trails, and parking is much easier to find than what he is accustomed to.

I asked XG, given that he has not visited the property, what made him say he likes the area. XG submitted that his opinion of the area is based on his internet research. He added that he does not have the luxury to fly to BC and look around, and that the housing market is very competitive.

I asked XG about buying the property without having visited it. XG submitted it was stressful, but he and his wife were motivated by the proximity to their daughters and the warmer climate. XG testified that they made the decision to purchase the property quickly because rentals in the area are very expensive. He said that when they “crunched the numbers,” paying the mortgage on the property versus paying rent for his daughters, buying the property would lead to “big savings” for the family. XG testified that the family was also looking for housing with certain criteria, as his daughters want some privacy. XG submitted that he did a lot of research, and relied on his friend to supply him with video and photos of the property.

Analysis

I find the Landlord served the Two Month Notices on the Tenants in person on October 26, 2021, and in accordance with section 88 of the Act.

Section 49 states that within 15 days after receiving a Two Month Notice, a tenant may dispute the Notice. Tenant RH applied to dispute the Notice on November 7, 2021; Tenants SL and JH each applied to dispute their Notices on November 8, 2021; and Tenant SM applied to dispute her Notice on November 9, 2021. Therefore, I find the Tenants each applied to dispute the Two Month Notices within the 15-day deadline set by the Act, which in this case was November 10, 2021.

I find each of the Two Month Notices meet the form and content requirements of section 52 of the Act as each of the Notices is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. While the effective date of the Notices, January 6, 2022, is incorrect, section 53 of the Act states that incorrect effective dates are automatically changed. The correct effective date of the Two Month Notices is December 31, 2021.

With reference to meeting the conditions necessary to issue a notice to end tenancy under section 49(5) of the Act, the Landlord provided undisputed evidence that the following has occurred:

- the Landlord entered into an agreement in to sell the rental unit;
- all the conditions on which the sale depends have been satisfied;
- the Purchaser asked the landlord, in writing, to give notice to end the tenancy on the grounds the Purchaser is an individual and the Purchaser, or a close family member of the Purchaser, intends in good faith to occupy the rental unit.

The Tenants dispute the Purchaser intends in good faith to occupy the rental unit.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A identifies scenarios that may suggest a landlord is not acting in good faith, including the attempt to avoid obligations under the Act related to repairs. The Guideline also identifies the availability of comparable suites and a history of the landlord ending tenancies to occupy a rental unit without following through on occupation, as possible indicators of an ulterior motive for ending the tenancy for landlord occupancy.

The Tenants indicated that the Landlord has numerous outstanding obligations under the Act related to repairs. I accept the Tenants' affirmed testimony that the property is old, "very run down," and has many deficits. The Tenants claim they haven't requested the Landlord make any repairs to minimize the impact on the Landlord and preserve their economical housing.

I accept XG's affirmed undisputed testimony that he had the property inspected, which gave him a sense of its condition and identified no major issues, and that he plans to make improvements to the property.

In the absence of a history of unfulfilled requests for repairs or an inspection report that identifies breaches of health, safety, and housing standards required by law, I am unable to conclude the Purchaser has an ulterior motive of avoiding repairs, or that the rental units are in such disrepair that they not suitable for occupation by his family members.

The Tenants claim the Purchaser has an ulterior motive related to demolishing the rental property to develop higher density housing (land assembly). The Purchaser replied he has no control over how real estate is advertised and he and his family intend to occupy the property. Both the Purchaser and the Landlord denied that the sale of the rental property to the Purchaser is part of a land assembly. I find the Landlord's and Purchaser's testimony to be credible and sufficient to demonstrate, on a balance of probabilities, a good faith intention to occupy the rental units.

The Tenants have also implied the Purchaser must have an ulterior motive because occupation of the rental units will not be suitable for the lifestyle of the purchaser's adult children. I find XG's affirmed testimony of his plan for uniting the family in the rental property to be credible and sufficient to demonstrate, on a balance of probabilities, a good faith intention to occupy the rental units.

In conclusion, although the Tenants have raised a number of reasons they don't believe the Purchaser will occupy the rental units, I find XG has met the onus of proving, on a balance of probabilities, that he and his family members intend to occupy the rental units.

The Tenants' applications to cancel the Two Month Notices are dismissed. The effective date of the Notices has passed, and the Landlord is entitled to order of possession in accordance with section 55(1) of the Act.

In the interest in ensuring both parties are aware of the consequence for landlords and purchasers who do not meet the stated purpose for ending the tenancy, I bring the attention of the parties to section 51(2) of the Act:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As their applications have been dismissed, I decline to award RH and SL their filing fees.

Conclusion

The Tenants' applications are dismissed.

Pursuant to section 55(1) of the Act, I issue the Landlord orders of possession, which will be effective two days after they are served on the Tenants. It is the Landlord's obligation to serve the orders of possession on the Tenants. If a Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: February 3, 2022

Residential Tenancy Branch