



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, HM, and the Tenant, CS, Witness, PH, and Advocate, KC, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on September 30, 2021. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on September 30, 2021 pursuant to Section 88(a) of the Act.

The Tenants served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on October 20, 2021 (the “NoDRP package”). KC referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package for this hearing five days after mailing them, on October 25, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenants uploaded a copy of the tenancy agreement and the Two Month Notice. These documents were not served on the Landlord. The Landlord stated that he has tried reaching out to the previous owners of the residential property to get a copy of this tenancy agreement, but he has not received a response. The Landlord confirmed that he was willing to go forward without a copy of the tenancy agreement.

Preliminary Matter

Bias or Conflict of Interest

I was alerted to a possible appearance of bias or a conflict of interest. I recognized one name associated with one party with which I had a past professional relationship. I told the parties that I have no reasonable apprehension of bias in this matter and can be objective to decide this application. None of the parties objected to me hearing this application.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s Two Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
4. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy agreement was uploaded by the Tenants. The Landlord recently purchased this property on September 28, 2021. The parties provided that this periodic tenancy began on April 1, 2019. Monthly rent is \$1,200.00 payable on the first day of each month. The Tenants are responsible for a portion of the utilities, of which the Landlord stated he has just figured out the utilities amounts. The Tenants testified that a security deposit of \$600.00, and a pet damage deposit of \$600.00 were collected at the start of the tenancy; however, the submitted tenancy agreement does not confirm that a pet damage deposit was collected. There is a note in the tenancy agreement which states: *normally no Pets allowed, We have made an exception for Chris. Please keep yard & Lawn clean.* The Landlord stated that if his legal documents state he holds \$1,200.00, he will follow it.

The reason noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was November 30, 2021.

The Landlord says it is his plan, with his family – wife and three children, to move to the city where the rental property is located. In the sale transaction of the residential property, the Landlord tried to get the previous Landlord to serve notice on the Tenants in the property for vacant possession, but the previous owners were not easy to work with. When he first served the Two Month Notice, he testified that he could be flexible with a move out date for the Tenants, but that is not his position now. The Landlord finds the Tenants to be unsafe, argumentative and they are not taking care of the yard space. He does not want his children around them to witness the bantering that occurs with these Tenants.

The Landlord admitted that he does not own the property where he presently lives. The residential property serves all of the Landlord's needs, he is especially excited to use the huge garage space and begin renovations in the residential property to make it suitable for his family's use. The Landlord testified that the residential property was originally a duplex, then converted to a 4-plex. The Landlord further testified that he has come to an agreement with the tenant in the neighbouring downstairs unit that they will

be vacating the unit, the latest, December 31, 2022. The Landlord and his family will be taking over the whole downstairs space including the Tenants' unit and their neighbour's unit.

The Tenants submit that the residential property is a two bedroom unit and is not enough space for the Landlord and his family to live in. The Tenants' advocate asked the Landlord if he offered the Tenants 'if the Landlord raised the rent 50% the Tenants could remain in the unit'. The Landlord denied this proposition. The Tenants' advocate states the Landlord cannot be trusted.

The Tenants' witness, PH, stated she first met the new Landlord on September 30, 2021. PH shared that she has known the Tenants since 2019. PH stated the new Landlord increased her rent \$100.00 during a verbal conversation with her. She was paying \$1,400.00, and beginning October 1, 2021, PH started paying \$1,500.00 per month for rent. PH later discovered that the way her rent was increased was not done according to provisions in the Act. PH testified that she was afraid to not pay the rent increase, then get evicted. She is aware that two other families are being evicted.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

49 (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

(i) *not earlier than 2 months after the date the tenant receives the notice,*

...

- (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.*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...*

- (8) *A tenant may dispute*

- (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

The Landlord served the Two Month Notice on the Tenants on September 30, 2021. I find that the Two Month Notice meets the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on October 13, 2021 which is within 15 days after the date the Tenants received the Two Month Notice.

The Tenants made a claim that they did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties understand issues that are likely to be relevant in this regard. The good faith intention is described as follows:

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.

...

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.

The Tenants' advocate states that the Landlord's good faith intentions are questionable considering the Landlord's actions in trying to up the rents of tenants in the residential property. The Tenants' advocate points to the open ended arrangements set up with the other downstairs tenant who resides next to the Tenants in this matter.

The Landlord asserts that he and his family are excited to move into the property. He is keen to begin renovations on the downstairs units in which his family will reside. The Landlord testified that he cannot wait to begin working in the large garage space which he will use when he is engaged in the renovations of the residential property for his family's use. The Landlord explained that the end date for the other downstairs unit is December 31, 2022, at the latest. If this tenant finds another space, they can provide the Landlord with one month notice and leave the property. I find that the Landlord does have the good faith intention on a balance of probabilities that he and his family will be moving into the residential property, specifically the Tenants' unit, then later expanding to the neighbouring tenant's rental unit. The Landlord has proposed a believable plan for his family's relocation and I find the Landlord has the honest intention to move into the rental property with his family, and consequently I dismiss the Tenants' application to cancel the Two Month Notice without leave to re-apply.

As the Tenants were not successful in their application, I must now consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads 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 [form and content of notice to end tenancy], and*

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

I find that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act and I uphold the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenants.

As I uphold the Landlord's Two Month Notice, I caution the Landlord to regard Section 51 of the Act regarding: Tenant's compensation, which comes into play when the Landlord does not fulfil the stated purpose in his notice.

As this tenancy has ended, I decline to make any orders on the Landlord to comply with the Act, regulations and tenancy agreement. Finally, as the Tenants were unsuccessful in their claim, they are not entitled to recovery of the application filing fee.

Conclusion

The Tenants' application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective two (2) days after service on the Tenants. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: March 07, 2022

Residential Tenancy Branch