



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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 06, 2021 (the "Application"). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 30, 2021 (the "Notice")
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with Legal Counsel. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant and Landlord provided affirmed testimony.

Legal Counsel confirmed the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same as the dispute of the Notice. I have considered the dispute of the Notice. The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is dismissed without leave to re-apply because it is covered by the dispute of the Notice.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and Tenant's evidence in January of 2022 and confirmed there are no service issues with these.

Legal Counsel advised that the Tenant did not receive the Landlord's evidence. The Landlord said they did not serve their evidence on the Tenant.

I found the Landlord failed to comply with rule 3.15 of the Rules and the requirement to serve their evidence on the Tenant not less than seven days prior to the hearing. I heard the parties on whether the evidence should be admitted or excluded. Legal Counsel submitted that the evidence should be excluded and noted that they have not seen it. At first, the Landlord said they were fine with exclusion of the evidence; however, they then submitted that the evidence should be admitted.

Pursuant to rule 3.17 of the Rules, I excluded the Landlord's evidence as I found it would be unfair to admit it when it had not been served on the Tenant and therefore the Tenant could not have known that the evidence would be relied on at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence as well as the oral testimony and submissions of the parties and Legal Counsel. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The parties agreed the tenancy started May 15, 2015, and that they did new written tenancy agreements each year. The tenancy agreement submitted has a start date of September 01, 2020, and is a

month-to-month tenancy. Rent is \$3,700.00 per month due on the first day of each month. A security deposit of \$1,700.00 was paid. The tenancy agreement includes an addendum.

The Notice was submitted. The grounds for the Notice are:

The rental unit will be occupied by the Landlord or the Landlord's close family member being the child of the Landlord or Landlord's spouse.

The parties agreed the Notice was served and received by the Tenant November 30, 2021.

The Landlord confirmed the Notice was issued for the Landlord to move into the rental unit.

The Landlord testified that them and their girlfriend intend to move into the rental unit. The Landlord testified that the rental unit is a house with three bedrooms. The Landlord testified that they intend to use one of the bedrooms as an office, because their girlfriend works from home, and one of the bedrooms as a spare bedroom. The Landlord testified that they are 30 years old, currently living with their mother Landlord H.J.O. and want to live on their own. The Landlord testified that their girlfriend also currently lives with their parents.

The Landlord denied the Tenant's allegations that the Notice was issued because the Landlords want more rent. The Landlord testified about calculations they had done and submitted that it would not make financial sense to end the tenancy to rent the house out for more money. The Landlord acknowledged that the Landlords originally intended to sell the rental unit or demolish the rental unit and rebuild a house on the property and that they told the Tenant this; however, the Landlord testified that the Landlords' plans have now changed. In relation to the change in plans, the Landlord testified about their sister changing their mind about going to a University in the area of the rental unit and that their sister now intends to go to a University in another province. The Landlord submitted that plans can change and this is what has happened over the seven year tenancy.

Legal Counsel referred to an email chain in evidence and explained that the rental unit was originally rented with a room over the garage which was later declared uninhabitable by the City. Legal Counsel advised that the Landlords had to reduce the

rent given the loss of use of the space and that this is when plans to redevelop the property began. Legal Counsel advised that the Landlord told the Tenant they were going to tear the house down and build something else. Legal Counsel said the Tenant told the Landlord they were happy to move when they received the demolition permit; however, a permit was never obtained. Legal Counsel advised that the Landlord then changed the plan to have their sister move into the rental unit because their sister was going to attend a University in the area; however, this never transpired.

Legal Counsel stated that the Landlord sent an appraiser to the rental unit to have the house valued so they could sell it. Legal Counsel said that the next thing that occurred was issuance of the Notice for the Landlord to move into the rental unit. Legal Counsel referred to an email in evidence about the Landlord having to talk Landlord H.J.O. into letting the Landlord move into the rental unit and that the plan is for the Landlord to live at the rental unit five days a week and at Landlord H.J.O.'s two days a week.

Legal Counsel submitted that the Notice is being used as a means of clearing the way for either the sale of the rental unit or to re-rent the unit. Legal Counsel pointed out that the Landlords are now receiving less rent than when they rented the house to the Tenant due to the issue with the room over the garage. Legal Counsel advised that the Tenant intends to remain in the rental unit until the Landlords sell it, obtain a demolition permit for it or in fact need it for their own use. Legal Counsel submitted that the Landlords are simply trying to end this tenancy.

In reply, the Landlord testified that the Landlords have never put the rental unit on the market for sale. The Landlord testified that the appraisal was for the bank in relation to a mortgage. The Landlord explained that living in the rental unit for five days and going back to Landlord H.J.O.'s for two days relates to a cultural tradition and that they would go back to Landlord H.J.O.'s to look after them.

The Tenant submitted the following relevant documentary evidence:

- An email dated August 05, 2020 from the Landlord to the Tenant about the room above the garage being an illegal suite and deciding to change it back to a storage room. In the email, the Landlord states that Landlord H.J.O. purchased the rental unit for investment purposes.
- Correspondence from August 05, 2020 to July 06, 2021 between the parties showing the Landlords did not want to reduce rent for loss of use of the room

above the garage or did not want to reduce it by the amount eventually agreed upon.

- Emails between the parties showing the following timeline of communications:
 - May 01, 2021: The Landlord tells the Tenant they are in the process of deciding whether to rebuild the house (rental unit) or sell it. The Landlord states that they will not be renewing the tenancy which will end August 31, 2021.
 - June 01, 2021: The Landlord writes the Tenant a reference letter stating in part, “we are in the process of developing the property so their tenancy will come to an end when we do so.”
 - July 06, 2021: The Landlord emails the Tenant about compensation for loss of space being \$600 x 12 for a total of \$7,200.00. I understand this to be about the room above the garage.
 - August 24, 2021: The Tenant lets the Landlord know that when a fixed term tenancy expires, the tenancy continues as a monthly tenancy.
 - September 09, 2021: The Landlord lets the Tenant know they are still deciding whether to sell the rental unit or rebuild another house on the property. The Landlord states that they would like to set the move out date as December 31, 2021.
 - November 09, 2021: The Tenant lets the Landlord know they will remain in the rental unit on a month-to-month basis until the Landlord provides proper notice ending the tenancy.
 - November 30, 2021: The Landlord serves the Notice stating that they have changed their plans, the Landlords are not going to sell or rebuild the house and instead the Landlord is going to move into the house.
- An email dated November 20, 2021 about an appraisal of the rental unit being conducted.

Analysis

Pursuant to rule 6.6 of the Rules, the Landlords have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

Policy Guideline 2A deals with ending a tenancy for occupancy and states 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...

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.

(emphasis added)

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. The parties agreed the Notice was served and received November 30, 2021. The Application was filed December 06, 2021, within time.

The parties disagree about the intention of the Landlords in issuing the Notice and therefore I have focused on the documentary evidence submitted to support each position.

There is no admissible documentary evidence before me from the Landlords to support the Landlord's testimony that they intend in good faith to move into the rental unit. Nor have the Landlords provided other evidence to support the Landlord's testimony, such as testimony from Landlord H.J.O. or the Landlord's girlfriend.

In contrast, the Tenant has provided documentary evidence to support their position. The Tenant has provided documentation showing the Landlords intended to sell or demolish and rebuild the rental unit in May of 2021, June of 2021 and September of 2021, which was less than three months before the Notice was issued. The Tenant has provided documentation showing the rental unit was purchased as an investment property. The Tenant submitted documentation showing the rent reduction for loss of use of the room above the garage was a contentious issue between the parties and did result in a rent reduction less than five months before the Notice was issued. As well, I find that the correspondence between the parties seems to suggest that the Landlords did not know they could not simply end the tenancy without doing so in accordance with section 44 of the *Act* and that, when the Tenant pointed this out to them in the November 09, 2021 communication, the next communication was the Notice and November 30, 2021 email stating that the Landlords had changed their mind and now the Landlord intends to move into the rental unit. I find the documentary evidence provided by the Tenant does raise a real issue as to whether the Landlords are acting in good faith.

Given the Tenant has raised through documentary evidence a real issue as to whether the Landlords are acting in good faith, I find more than the Landlord's testimony alone is required for the Landlords to meet their onus to establish they are acting in good faith.

In the circumstances, I am not satisfied the Landlords have met their onus to prove the Landlord intends in good faith to occupy the rental unit and therefore the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

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 23, 2022

Residential Tenancy Branch