



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 16, 2021 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 07, 2021 (the “Notice”).

This matter was previously heard by a different Arbitrator; however, the original Arbitrator was not available to continue with this matter and therefore I heard the matter from the beginning.

The Tenant appeared at the hearing with the Advocate. The Landlord appeared at the hearing with the Translator and Legal Counsel. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant, Landlord and Translator provided affirmed testimony.

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

The Tenant advised that they are only relying on the document labelled “Tenant_evidence.pdf” at the hearing. The Landlord confirmed there was no issue with service of the hearing package or Tenant’s evidence.

The Advocate took issue with admissibility of the document labelled “Landlord's_submission.pdf” based on what occurred at previous hearings. I found the Advocate could not outline or explain any prejudice to the Tenant in admitting the document given the history of this matter and the fact that I am hearing it from the

beginning. In the absence of any prejudice to the Tenant, I find the document admissible subject to the decision below about written submissions.

The parties provided written submissions for the original Arbitrator to consider after the original Arbitrator heard evidence on this matter. I asked the parties for their positions on whether I should consider these written submissions given they rely on evidence presented before the original Arbitrator and not necessarily before me. The Advocate submitted that the written submissions should be excluded. Legal Counsel's position on this issue was unclear.

I exclude the written submissions provided by the parties because these are based on evidence presented to the original Arbitrator and not necessarily presented to me. I find it would be unfair to the parties for me to consider submissions made to the original Arbitrator when I am re-hearing the matter.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony and submissions of the parties. 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, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 15, 2020, and was for a fixed term ending July 14, 2021. Rent is \$1,000.00 per month due on the 15th day of each month. The Tenant paid a \$500.00 security deposit.

The Notice was submitted as evidence. The effective date of the Notice is July 14, 2021. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's spouse.

Legal Counsel advised that the Notice was posted to the door of the rental unit April 07, 2021. The Tenant did not recall when they received the Notice.

Legal Counsel advised as follows. The Landlord issued the Notice because they want to move into their property. The Landlord purchased the property for their own use. The Landlord's mother lives in another country and got sick during the pandemic. The Landlord left the country to be with their mother. The property would have been subject to the empty home tax because the Landlord was out of the country for some time. The Landlord therefore leased the property to the Tenant. The property was not in great condition; however, the Tenant agreed to rent it as it was. The Landlord also rented out the upper unit of the property. The upper unit of the property was rented on a one year lease, otherwise the Landlord would have tried to occupy it rather than the rental unit.

Legal Counsel confirmed that the Statutory Declaration in evidence from the Landlord is solemnly declared and that it simply looks different than Statutory Declarations completed in B.C.

Legal Counsel sought an Order of Possession effective April 15, 2022.

The Tenant testified as follows. The Landlord did not tell the Tenant at the start of the tenancy that they planned to move into the rental unit after the fixed term tenancy was over. The Landlord did not say anything to the Tenant about what would happen at the end of the fixed term tenancy. The Tenant asked the Landlord repeatedly what would happen at the end of the fixed term tenancy and the Landlord avoided the questions at first; then, a few months into the fixed term tenancy, the Landlord said they would raise the rent to \$1,500.00 and decide if they wanted to keep the Tenant as a tenant. The Tenant told the Landlord this is not legal. The Landlord then had a rental manager take over communications with the Tenant and the rental manager told the Tenant the Landlord planned to move into the rental unit.

The Tenant further testified as follows. The Landlord is not intending to move into the rental unit. Other units in the area rent for \$2,000.00 per month. The Landlord issued the Notice so they can raise the rent to \$1,500.00. The Landlord told the Tenant the unit was previously rented for \$1,500.00. The Tenant assumes the unit was on the market for a while and therefore the Landlord lowered the rent to what the Tenant is paying.

The Tenant further testified as follows. The Tenant has had to repeatedly ask the Landlord to fix issues with the rental unit. The Landlord delayed fixing issues with the rental unit until the Tenant told the Landlord they would take the issues to the RTB at which point the Landlord eventually fixed the issues.

The Tenant further testified as follows. The upstairs tenants told the Tenant the Landlord renewed their lease at the end of August 2022, after the Notice was issued. The upstairs tenants are loud which would not be good for the Landlord.

The Advocate and the Tenant submitted that the rental unit is not suitable for the Landlord to live in because it does not have laundry facilities and the laundry upstairs is in the middle of the upper rental unit such that it would be difficult for the Landlord to use it with tenants living there.

In response to questions by Legal Counsel, the Tenant testified that they knew the rent was low when they rented the unit because of the condition of the rental unit.

The Advocate made the following submissions. The Landlord has failed to provide sufficient evidence to meet their onus to prove the grounds for the Notice. The Landlord has failed to prove good faith. The Landlord has only provided the Statutory Declaration, their own words, to prove the grounds for the Notice. The Landlord stated in the Statutory Declaration at paragraph 10 that they would take over the entire house, yet the Landlord has not tried to do so and instead renewed their lease with the upstairs tenants. The state of the unit, the Landlord's behaviour, the Landlord requesting a rent increase prior to stating they will move in and the Landlord being unwilling to do repairs is not in accordance with the Landlord wanting to move into the rental unit. In relation to the state of the unit, it does not make sense that the Landlord would not want to fix issues in the unit if they intended to move into it. The rent for the unit is below market rent. The unit was previously rented out for \$1,500.00. Now that the Landlord has completed repairs to improve the unit, the Landlord wants to rent it for higher rent. It was only after the Landlord requested that the Tenant agree to a 50% rent increase and the Tenant refused that the Landlord started talking about wanting to move into the rental unit.

The Advocate made the following submissions. If the Landlord's plan from the start of the tenancy was to move into the rental unit after the end of the fixed term, the Landlord could have put this in the tenancy agreement. Further, the Landlord could have told the

Tenant their plan from the beginning. The upper unit is more livable of the two units and yet the Landlord renewed the lease for the upstairs tenants after the Notice was issued.

In reply, the Landlord testified that they never told the Tenant they wanted to raise the rent. The Landlord also testified that they signed a one year fixed term tenancy with the Tenant and both parties initialled the box about this term.

In reply, Legal Counsel submitted that the Tenant is asking that I accept their word as to what the Landlord said to them throughout the tenancy.

Analysis

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.

The Tenant had 15 days from receipt of the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I accept that the Notice was posted on the Tenant's door April 07, 2021. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice April 10, 2021. The Application was filed April 16, 2021, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has 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.

Policy Guideline 2A addresses ending a tenancy for occupancy and states in part:

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.

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 accept that the Landlord intends to move into the rental unit as stated. I have a Statutory Declaration from the Landlord before me stating they intend to move into the rental unit. The Advocate did not seek to cross-examine the Landlord on the Statutory Declaration and therefore I do not have concerns about the accuracy of what is stated in it. Further, I find the Landlord is in a better position to know their own intention than the Tenant is. In the circumstances, I find the Landlord's Statutory Declaration sufficient to prove they intend in good faith to occupy the rental unit.

I also note that, for the most part, the issues raised by the Tenant are based on speculation and assumptions versus some compelling facts. Further, the Tenant has simply asserted that others have told the Tenant things without providing supporting evidence of this. I understand that the Landlord has the onus to prove they intend in good faith to occupy the rental unit and I am satisfied the Landlord has done so here with the Statutory Declaration. However, I find it worth noting that the issues raised by the Tenant are not compelling reasons to find that the Landlord has failed to prove the grounds for the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

Given the above, I find the Notice is valid and uphold the Notice. Given this, I dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* states:

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 have found the Notice complies with section 52 of the *Act* and have dismissed the Tenant's dispute of the Notice. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 15, 2022.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 15, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court 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 *Act*.

Dated: April 12, 2022

Residential Tenancy Branch