



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Constantine Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenants' application under the Residential Tenancy Act (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use dated January 24, 2022 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlord attended the hearing. One of the Tenants, LV, attended the hearing on behalf of both Tenants. The Landlord and LV were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibits unauthorized recordings of dispute resolution hearings. The Landlord and LV confirmed they were not recording this dispute resolution hearing.

The parties did not raise any issues with respect to the service of dispute resolution materials. The Landlord confirmed he received a copy of the Tenants' notice of dispute resolution proceeding package and documentary evidence. The Tenants submitted a registered mail receipt dated February 9, 2022 in support of service. LV confirmed the Tenants also received a copy of the Landlord's documentary evidence. Based on the above, I find each party to have been duly served in accordance with sections 88 and 89 of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Two Month Notice?
2. If the Tenants are unsuccessful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recover their filing fee for this application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The Tenants submitted a tenancy agreement which indicates that the tenancy commenced on July 1, 2013 for a fixed term of 1 year, and continued thereafter on a month-to-month basis. Monthly rent is currently \$827.20, due on the first day of each month. The Tenants paid a deposit of \$362.50 which is held in trust by the Landlord.

The Landlord testified the rental unit is one of eight units in the building. The Landlord confirmed his father was the previous owner of the building. The Landlord explained after his father passed away, ownership of the building was transferred to a corporation, Constantine Properties Inc., in May 2021. The Landlord confirmed he is the sole shareholder of this corporation. The Landlord stated he began communicating with the Tenants as the new landlord in June 2021.

The Landlord testified he wished to move into the rental unit with his wife. The Landlord explained he chose the rental unit because it is one of the better units in the building:

- the rental unit is located in the back of the building, where it is not in the sun, not facing the street or driveway, and is quieter; and
- the rental unit is on the ground floor, which is more suitable due to his wife's medical condition.

The Landlord explained his wife's condition makes it difficult for her to walk up stairs for up to months at a time. The Landlord submitted photos contrasting the step leading to

the external patio entrance of the rental unit with the flight of stairs leading to the units upstairs. The Landlord's evidence indicates that there is no elevator in the building.

The Landlord stated that he and his wife currently live in the lower mainland, but that he works on the island, where the rental unit is located. The Landlord testified his brother, children, and grandchildren all live on the island. The Landlord stated the costs that they are incurring for travel back and forth from the island, including the cost of ferry and hotels, do not make sense anymore. The Landlord testified he also wanted to move into the rental unit so that he could look after the building.

The Landlord stated he served the Two Month Notice on January 24, 2022, by posting a copy to the Tenants' door and by leaving a copy in the Tenants' mailbox. The Tenants confirmed receipt of the Two Month Notice in their application.

LV testified the Tenants have been good long-term tenants, work full-time, and do not party.

LV questioned why the Landlord did not choose units #1 and #2 in the building, as they are also ground level. LV testified that units #1 and #2 do not have an additional patio step, unlike the rental unit. The Tenants' submitted evidence includes photographs of the front of the building, which show the external entrances of units #1 and #2 on the ground floor.

LV questioned why unit #7 upstairs was never offered to the Tenants. The Tenants' submitted evidence includes a Google search screenshot showing that unit #7 was listed for rent in December 2021. The listing indicates unit #7 was advertised for \$1,750.00, which is more than double the Tenants' rent.

The Landlord confirmed unit #7 was rented out under a fixed term tenancy agreement in December 2021. The Landlord's evidence was that he and his wife committed to moving into the building in January 2022, due to new personal events in the family that required them to be closer to their children and grandchildren. The Landlord further stated that unit #7 ended up being rented for an amount that was far below advertised.

In their application, the Tenants submitted there had been repair requests that were ignored. During the hearing, LV clarified that was a reference to the fact that water has been getting into the exterior wall of the building, causing some rippling of the paint. LV

stated that the late building owner's executor, the Landlord's brother, had talked about re-doing the wall once probate had been completed.

The Tenants' application makes further mention of a dispute between the parties regarding patio items. During the hearing, LV testified the Landlord asked the Tenants to remove items from their patio, even though other tenants in the building were allowed to keep various items on their balconies.

The Landlord denied there was a dispute about items on the Tenants' patio. He testified the Tenants were asked to remove three bags of dirt from the walkway, not the patio, as they were a tripping hazard.

LV questioned whether the Landlord owned other property on the island that he and his wife could move into. The Landlord denied that he owns such other property.

Analysis

Pursuant to section 49(4) of the Act, a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(1) of the Act contains the following definitions:

- A "landlord", for the purposes of section 49(4), is a family corporation that, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.
- A "family corporation" is a corporation in which all the voting shares are owned by (a) one individual, or (b) one individual plus one or more of that individual's brother, sister or close family members.
- A "close family member" is (a) an individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

In this case, I accept the Landlord's undisputed testimony that the rental unit is owned by Constantine Properties Inc., and that the Landlord is the sole shareholder of this corporation. Accordingly, I find that Constantine Properties Inc. meets the definition of a "landlord" and a "family corporation" under section 49(1) of the Act, for the purpose of section 49(4).

I further find the Landlord to be “a person owning voting shares in the corporation” and his wife to be “a close family member of that person” pursuant to section 49(4) of the Act.

I note that section 1 of the Act defines a “landlord”, in relation to a rental unit, to include not only the owner of the rental unit, but also the owner’s “agent” or “another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement”. I find the Landlord, as an agent and the owner of the corporate landlord, Constantine Properties Inc., to be a “landlord” within the meaning of section 1 of the Act, and hence can be named as such for the purposes of this application.

Section 49(7) of the Act requires the notice given by the landlord under section 49(4) to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant’s notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant’s notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

Section 49(2)(a) further requires that the effective date of a landlord’s notice under section 49(4) must be:

- i. not earlier than 2 months after the date the tenant receives the notice,
- ii. the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- iii. if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

In this case, the Two Month Notice is dated January 24, 2022, with an effective date of March 31, 2022. I find the Landlord issued the Two Month Notice to the Tenants as an agent of the property owner, Constantine Properties Inc. I further find the Two Month Notice complies with the requirements set out in sections 52 and 49 of the Act.

Based on the parties' evidence, I find that copies of the Two Month Notice were posted to the Tenants' door and left in the Tenants' mailbox on January 24, 2022, in accordance with section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenants are deemed to have received the Two Month Notice on January 27, 2022.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. Therefore, the Tenants had until February 11, 2022 to dispute the Two Month Notice. The records of the Residential Tenancy Branch disclose that the Tenants submitted their application on January 26, 2022. I find the Tenants made their application within the 15-day dispute period required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states:

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.

Upon considering the sum of the parties' testimony and evidence, I find on a balance of probabilities that the Landlord and his wife intend in good faith to occupy the rental unit as stated in the Two Month Notice, without any ulterior or dishonest motive. In coming to this conclusion, I find the Landlord has given clear and cogent reasons for him and his wife to move into the rental unit, which include being closer to family and reducing costs associated with traveling to and from the island.

Moreover, I accept the Landlord's reasons for choosing the rental unit in particular over units #1 and #2, which are also ground level units—being that the rental unit does not face the street or driveway, and is located in the back of building where it is cooler and quieter. I accept that the upstairs units, including unit #7, would not have been suitable for the Landlord's wife. I accept that the step leading up to the patio entrance of the rental unit is much more manageable than the flight of stairs leading up to the second floor. Based on the evidence before me, I do not find there to be another comparable vacant rental unit in the property that the Landlord and his wife could occupy.

In addition, I am satisfied there is no ulterior or dishonest motive on the part of the Landlord. I accept the Landlord's evidence that the decision to move to the island was made in January 2022. I do not find the Landlord attempting to avoid any obligations under the Act or the parties' tenancy agreement. I further find there was insufficient evidence before me to conclude that the issuance of the Two Month Notice was in retaliation for any dispute between the parties.

Accordingly, I dismiss the Tenants' application to cancel the Two Month Notice.

I acknowledge this is a difficult situation for the Tenants. I accept LV's testimony that they have been long-standing, good tenants who paid their rent on time. I find both parties have provided honest and forthright evidence, but the Landlord has met the onus of good faith required under the Act.

I note pursuant to section 51(1) of the Act, the Tenants are entitled to receive compensation from the Landlord equal to one month's rent. If the Landlord has not yet compensated the Tenants for this amount, arrangements should be made to do so forthwith.

I take this opportunity to further remind the parties of section 51(2) of the Act, which provides that a landlord must pay a tenant, in addition to the compensation payable under subsection 51(1) of the Act, an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement if the landlord 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 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.

2. Are the Landlords entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

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.

Having dismissed the Tenants' application and upheld the Two Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

I note the effective date stated on the Two Month Notice has already passed. As such, I grant the Landlord an Order of Possession effective two (2) days after service upon the Tenants.

3. Are the Tenants entitled to recovery of the filing fee from the Landlords?

As the Tenants were not successful in their application to cancel the Two Month Notice, I dismiss the Tenants' claim for reimbursement of the \$100.00 filing fee.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenants. The Landlord is provided with the Order in the above terms and the Tenants must be served with the Order as soon as possible. Should the Tenants fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and be 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: May 24, 2022

Residential Tenancy Branch