



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called witnesses T.G. and J.A. who affirmed to tell the truth.

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

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

The tenant testified that the landlord was personally served with a copy of this application for dispute resolution and evidence on March 14, 2022. The landlord confirmed same. I find that the landlord was served in accordance with sections 88 and 89 of the *Act*.

The landlord did not submit any evidence for consideration.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the tenant and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that this tenancy is ongoing. Both parties agree that the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on January 24, 2022. The Notice is dated January 24, 2022 and states that the tenant must move out of the subject rental property by March 31, 2022 because the subject rental property will be occupied by the landlord or the landlord's spouse.

Both parties agree that the landlord listed in this application for dispute resolution is the agent of the owner of the subject rental property. The landlord testified that it is the owner who intends to move into the subject rental property.

The tenant testified that he was originally told that the owner's uncle was going to move into the subject rental property.

The tenant testified that he does not believe that the owner intends on moving in and is acting in bad faith. The tenant testified that two other homes on his street, all owned by the same landlord, each received a Two Month Notice to End Tenancy for Landlord's Use of Property on January 24, 2022. The above testimony was agreed to by witnesses T.G. and J.A. Witness T.G. and J.A. testified that they have moved out of the above-mentioned homes in accordance with the Notices they received.

Witness T.G. testified that the Notice she received on January 24, 2022 stated that she had to move out by March 31, 2022 because the subject rental property was going to be occupied by the landlord or the landlord's spouse.

Witness J.A. testified that the Notice she received on January 24, 2022 stated that she had to move out by March 31, 2022 because the landlord is a family corporation and 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.

The landlord testified that the landlord's entire family is moving from another country to Canada and intend to live in the three homes. The landlord testified that at the time the Notices were served on the three tenants in the three separate rental units, it was not clear in which house each of the family members would live.

The landlord testified that the owner of the subject rental property is now in Canada living at his daughter's house and is ready to move into the subject rental property. The landlord testified that the landlord's estranged spouse will be living in the rental property previously occupied by T.G. and that the landlord's daughter will be living in the rental property previously occupied by J.A. The landlord did not provide any testimony regarding why the Notice served on J.A. involved a family corporation and none of the other Notices did.

Witness J.A. testified that she moved out on March 31, 2022 and that no-one has since moved in but the landlord has completed major renovations including the removal of a load bearing wall, flooring, and bathtub.

Witness T.G. testified that she originally disputed the Notice she received but due to stress and uncertainty she moved out 1.5 weeks ago and that her old rental property is now being renovated.

Witness T.G. testified that she was allowed to stay in the rental property past the effective date of the Notice because the owner's Visa did not come through by the end of March 2022. This was not disputed by the landlord.

The landlord testified that all of the homes require major renovations but that she does not know what renovations the owner is doing. The landlord testified that the owner and his family intend to live in the three properties and are currently camped out in the two that have been vacated while the renovations take place.

The tenant, T.G. and J.A. testified that they have looked through the windows of the rental homes previously occupied by T.G. and J.A. and that no-one has moved into the properties.

The landlord testified that the tenant's home will need substantial renovation. The landlord testified that she did not know what renovations were being planned by the owner.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenant on January 24, 2022, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The tenant alleged that the landlord and owner of the subject rental property are not acting in good faith.

Residential Tenancy Policy Guideline #2A 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.

As stated above, the onus is on the landlord to demonstrate that they, or in this case the owner of the subject rental property, intends to occupy the subject rental property for at least 6 months with no dishonest intention.

The landlord has not entered any documentary evidence whatsoever to corroborate or support her testimony. The landlord did not enter into evidence a signed statement of the landlord or the landlord's spouse regarding their intentions to reside in the subject rental property. The landlord did not enter into evidence documentary proof that:

- the owner or the owner's spouse were granted a Visa allowing them to live in Canada,
- the owner or the owner's spouse are in Canada or will shortly be in Canada and are ready to move into the subject rental property within a reasonable time of the tenant's vacation,
- the owner or the owner's spouse have taken any steps whatsoever to move into the subject rental property,
- at the time the Notice was served, the intention was for the owner or owner's spouse, rather than the owner's uncle, to move into the subject rental property,
- the owner or the owner's spouse do not intend to do major renovations requiring vacant possession.

I find that the landlord has not proved, on a balance of probabilities, that the owner of the subject rental property or the owner's spouse intends to occupy the subject rental property and are acting in good faith because no supportive documentary evidence was provided and the tenant has raised a valid concern about the landlord's intentions. The onus was on the landlord to prove their claim, and that onus was not met. I therefore cancel the Notice. The tenancy will continue on in accordance with the *Act*.

I also note that the landlord has not proved that the correct notice to end tenancy was served because she did not know the nature and extent of the renovations the landlords intend on completing. If the tenancy is ending because vacant possession for renovation is required, the landlord may have to file an application with the Residential Tenancy Branch for an Order of Possession for renovation or repair.

As the tenant was successful in this application for dispute resolution, the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00 from rent due to the landlord.

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 10, 2022

Residential Tenancy Branch