



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Persia Investment and Asset Management Corporation and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application(s) for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$19,188.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated May 31, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of their Application filing fee. The Tenant had filed a second application for moving expenses and mental distress; however, during the hearing, she withdrew these claims, as such, the second application is dismissed without leave to reapply.

The Tenants, K.B. and B.J., an agent for the corporate Landlord, P.B. ("Agent"), and counsel for the Landlord, D.B. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. Counsel added his email address in the

hearing, as well. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began as a fixed term starting on June 1, 2013, and running to May 31, 2014, with a final monthly rent of \$1,599.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$712.00, and no pet damage deposit. The Parties agreed that the Landlord had returned the security deposit to the Tenants in cash, in person on July 31, 2021.

The Tenants submitted a copy of the Two Month Notice, and the Parties agreed that it was signed and dated May 31, 2021, and that it has the rental unit address. The Two Month Notice was served in person on May 31, 2021, with an effective vacancy date of July 31, 2021. It was served on the grounds that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice, because the purchaser or a close family member intends in good faith to occupy the rental unit.

In the hearing, the Tenants testified about having been served with the Two Month Notice, about the other suites that could have been evicted, instead, and about the hardship it caused to have to move out of the rental unit in which they had lived for eight years. They said the Two Month Notice gave them only two months to find a new place to live and to move.

The Tenants said that they picked up mail at the residential property for months after they had moved out. They said that through their discussion with neighbours and from their own observations, they were able to determine that no one was residing in the rental unit after they moved out on July 31, 2021. Further, they said they noticed an

online advertisement of the unit, which said it would be ready for occupation on October 15, 2021. They said the newly renovated suite was advertised for \$2,900.00, which is over \$1,300.00 more than they were paying as Tenants. They accused the former and new Landlords of providing false statements that a family member of the purchaser was going to occupy the unit, and they said the Landlords did not act in good faith in evicting them.

Counsel for the Landlord said that the Tenants have been focusing on the fact that the purchaser failed to occupy the rental unit and did not intend to occupy it, because the unit was being renovated and rented out at a higher market value. He suggested that the Tenants are asserting that the Landlord evicted them to make financial gain.

Counsel focused on the wording of section 49 of the Act, on which the Tenants' claim is based. Section 49 (4) of the Act states that a landlord who 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 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Counsel said that the key words are "intends in good faith" to occupy the rental unit. He said that on August 3, 2021, the Landlord's corporation became the owner of the residential property. He acknowledged that they renovated and re-tenanted the rental unit in October 2021. Counsel said that there were delays in closing the purchase of the property, as it was supposed to close in June 2021, but it did not happen until August 2021. In the meantime, the Landlord's son, who had intended to move in, had moved elsewhere.

Counsel cited RTB Policy Guideline #2A ("PG #2A"), which addresses the requirements of ending a tenancy for a landlord's use of property and good faith. He said this Guideline provides for what is allowed under section 49 of the Act, as follows:

A. LEGISLATIVE FRAMEWORK

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

2. 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;
3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.

[emphasis added by Counsel]

Counsel said that the Landlord did not intend to defraud or deceive the Tenants, and that the Landlord had no ulterior motive in purchasing the rental unit. He cited *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) as supporting his client's position that the Landlord's good faith intention to have a family member move into the rental unit relieves the Landlord of the consequences of not achieving the intended purpose of the Two Month Notice.

I asked the Agent why his son did not move into the residential property, if this was the intention, and he said the following:

They looked at the place, but their reaction was not good. We spent lots of money and they thought it looks okay, but one of the rooms had holes and we could fix that. But also, the equipment in there – the oven, fridge, and the counter were bad. We had no other choice but to change it. But my daughter-in-law still said no. I told the realtor they don't like the place - inside - they don't like it. They are not coming,

I called the real estate agent and I said they don't want it. My son and daughter-in-law. We said to ask the Tenants if they want to stay there. That's the only reason. The Tenants told me they had found a place. They said we fixed the place and put it for rent with no intention of staying there. The other tenant - their son has cancer. We said see if they are having hardship, because they don't have to pay rent – that's how we treat the people.

The Tenants referred to the Landlord's submissions of a text exchange between the Agent and the realtor:

You have the text back and forth between. two individuals on June 24. [The Agent's] testimony is that the darker texts are that of the realtor and lighter texts are of the old landlord. That's not true, because it says: 'OMG they did not find a

place, but I'll let [D.] know'. Therefore, [D.] can't in the light text - that was [the Agent's representative].

The Tenants said that their second point was as follows:

The date in question Thursday, June 24 – looks to me as though we were still residing in the unit. We did not leave until July 31. If [the Agent] had in good faith intended to do what he said, he would have reached out – 'There's been a change of plans, we can offer you the place.' That discussion did not take place. That never happened; we were never told about this change of direction. If we were told, we would have stayed and saved over \$1,000.00 a month.

If the damage to the unit was so bad, why give our security deposit in full?

We had been in the unit many years. We were told it was the nicest of the four when he first viewed it. We kept it painted up and modern, so their claim of renovating and much damage done.... In the [online advertisement] – not much changed. The fridge was changed, and the stove were both stainless steel, and they had done some painting, but then they raised the rent to \$2,900.00

Also, the day was June. The son wanted to move into the unit, but [when we received the Two Month Notice] we still had two months to move, so we were inhabiting the unit until July 31st. Again, if the timing didn't work for the other parties, that's not a reason to change gears and have us move out. And again, if he did have good faith, he would have reached out on June 24th, because we had another month of residing there.

The Agent responded, as follows:

A couple of things, for the timing, they were supposed to sell before June, but the kids are going to school then. [My son and daughter-in-law] were supposed to move when the tenant moved out, but when they came to see it, the daughter-in-law didn't like it. I told the Agent, because they were dealing with the [previous] landlord, and they were dealing with Tenants. No one goes to the tenant and talks to them before closing. No one can go to talk to the tenants, so we told the real estate agent the same morning.

Right away the realtor called the owner, because they are dealing with each other. Legally the buyer is not supposed to talk to them. I still don't have that

gentleman's number. They came back to me that they already found a place. Right away, I called the realtor who called the Landlord. I didn't close the deal until the end of July. What I could do is call the realtor right away, and please tell them if they want, they can stay. I had zero intention to rent out or defraud. As a landlord you want a safe tenant. So, after one month they leave. I don't want to take that chance. I didn't know I could talk to them and ask them to stay. My son is not going to go there, and [the realtor] talked to the [previous] landlord and he didn't inform them. I don't know why they didn't tell them.

Counsel replied:

To clarify, regarding the text message, [the Tenant] correctly said they are not [the previous landlord]. They were [the previous landlord's] representative, as in the second message, he said 'I will let [the previous landlord] know. As [the Agent] suggested, what else was he supposed to do? He notified his realtor and said let's have them stay.

The Guidelines say that good faith is acting honestly, and this text message goes to his intent. His son was to move in, but did not; he was open to having the Tenants stay at that location. Good faith is the crux of this case. These text messages show no ulterior motive, he would not have said that, otherwise.

The Tenants responded:

He mentioned that he does not take changes with certain tenants. He said he has a track record of being a good landlord. I had resided there since 2013, before this situation. We have two children; we are as low risk tenants as you get - we have kept the unit in the finest condition.

Re intent, the onus is on [the Agent] to continue to have good faith and to reach out and connect with us to give us the option to say 'you may wish to return'. That never happened. We never saw these text message before they were served to us. No one said things had changed, and 'We would like you to stay'. I don't think that this is good faith. The rent is double after it was renovated.

The text messages referenced above are as follows:

Thu, Jun 24, 2:42 PM

[Agent's representative]

Hi, I just got a call from [the Agent] this morning and he said he's son will not be moving with him anymore. If the tenants downstairs haven't fully found a place he would be open to keeping them not sure if they found something.

[Realtor]

OMG they did find a place and paid deposits but I'll let [the previous landlord] know. It'll be hard to tell them now

[Agent's representative]

Okay maybe let's just skip saying it if they found something I told [the Agent] that too that I'm pretty sure they moved on

[Realtor]

Hey I know the upstairs people were really wanting the unit downstairs. I can quietly ask them and make sure they don't let people downstairs know. It'll make it easy for [the Agent].

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51 (3) of the Act states:

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances

prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. [emphasis added]

As explained in Policy Guideline 50 ("PG #50"):

Section 51 (2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

Further, I find from the Act and PG #50, that the intent of section 49 (4) is for a landlord or a close family member to move into the rental unit for more than just the six months noted in the Policy Guideline. Section 49 (4) of the Act states:

(4) 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.

[emphasis added]

Policy Guideline #2A clarifies what is meant by "good faith":

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is

on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA 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 (s.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 suggest the landlord is not acting in good faith in a present case.

If there are comparable 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 other ulterior motive. .

[emphasis added]

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence to raise good faith as an issue. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy. I find that this is what happened in the case before me.

If the good faith intent of the landlord is called into question, **the onus is on the landlord** to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

The undisputed evidence before me is that the Landlord did not accomplish the stated purpose for ending the tenancy at all, let alone within a reasonable time and for at least

six months. Further, if the purpose set out in the Two Month Notice were the Landlord's only intention for the rental unit, it is unclear as to why he did not immediately withdraw the Two Month Notice and ensure that the Tenants were given the opportunity to stay in the rental unit when his son rejected the unit. Rather, in the text messages noted above - the Landlord's evidence – the Agent's representative and the realtor determined that it was best to deceive the Tenants. I find the Landlord has failed to show an intention to reverse the eviction and allow the Tenants to stay, which I find would have been the logical result of not being able to fulfill the purpose of the Two Month Notice.

Why did the Agent not have the son and daughter-in-law view the suite before the purchase to ensure that they liked it, if there were no other options for using this rental unit in the Agent's mind? On what legal basis was the Agent prevented from reaching out to the Tenants to see if they wanted to stay there, if his company would have been their Landlord? These questions, and the fact that the Landlord renovated and re-rented the unit for 81% more than what the Tenants were paying cause me to doubt that the Agent's true and sole intention for the residential property was to have his son and daughter-in-law move in.

When I consider all the evidence presented to me by the Parties, I find that the Landlord has not fulfilled their onus to establish that they truly intended to do what they said on the Two Month Notice. As a result, I find that the Tenants are successful in their Application for compensation pursuant to section 51 of the Act.

Pursuant to sections 49, 51, and 67 of the Act, I award the Tenants with 12 times their \$1,599.00 monthly rent or **\$19,188.00** from the Landlord. Given their success, I also award the Tenants with recovery of their **\$100.00** Application filing fee from the Landlord pursuant to section 72 of the Act. Accordingly, I grant the Tenants a **Monetary Order** of **\$19,288.00** from the Landlord pursuant to section 67 of the Act.

Conclusion

The Tenants' claim for recovery of 12 times the monthly rent is successful in the amount of **\$19,188.00**, as the Landlord failed to provide sufficient evidence to fulfill their burden of proving their sole and good faith intent for a close family member to occupy the rental unit – the purpose of the Two Month Notice. Given their success, the Tenants are also awarded recovery of their **\$100.00** Application filing fee from the Landlord.

The Tenants withdrew their second application during the hearing, therefore, it is dismissed without leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenants a **Monetary Order** from the Landlord of **\$19,288.00**

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 27, 2022

Residential Tenancy Branch