



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 concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for the landlords' use of the property.

The tenants both attended the hearing and each gave affirmed testimony. The tenants also called 1 witness who gave affirmed testimony. The named landlords are companies, and both were represented by Agents who gave affirmed testimony, and were accompanied by spouses, who did not testify or take part in the hearing. The parties were given the opportunity to question each other and to give submissions.

During the course of the first day of the hearing, the telephone systems all cut off, as well as the Telus Web Portal, and due to time constraints the hearing did not conclude, in that the tenants were rushed to finish testimony and no time was permitted for the tenants' witness to testify. Therefore, I directed that the hearing be reconvened.

The same parties also attended for the second day of the hearing.

During the first day of the hearing, a good deal of time was spent discussing the exchange of evidence, which ultimately resulted in all parties agreeing that they did not oppose inclusion of any evidence. Therefore, all evidence of the parties has been reviewed and all relevant evidence is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

LANDLORDS' EVIDENCE:

The first landlord (DB) testified that the landlord company (JV) owns the property, and the landlord (DB) owns the company. The landlord company (BBRM) is a contractor to manage the property, which is owned by the landlord's daughter and son-in-law (JS and AS), who manage the property. The rental property is an RV Resort property.

The landlord further testified that his month-to-month tenancy began 6 years ago in one suite on the property, and then a year later the tenants moved into another suite on the property, and still reside there. Rent in the amount of \$900.00 is payable on the 1st day of each month, which was supposed to be \$1,100.00 per month, and the landlord is not aware of any rental arrears. No security deposit or pet damage deposit were paid by the tenants. One of the tenants is a relative of the landlord.

On December 7, 2021 the landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property to the door of the rental unit, and then sent a copy by email to the tenants. A copy of the Notice has been provided for this hearing and it is dated December 7, 2021 and contains an effective date of vacancy of February 28, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse and the child of the landlord or landlord's spouse.

The rental unit will be occupied by the landlord and the landlord's wife and daughter, part time when in the area, but the landlord also works up North throughout the winter full time. The landlord's family occupied the rental unit prior and want to occupy it again, having done \$120,000.00 of improvements for the family. Also, the landlord has sold a farm, and needs to move into the rental unit. Evidence of the sale of the farm has been provided for this hearing, and the landlord testified that the landlord's belongings were moved out and the purchasers take possession soon.

The landlord has owned the rental property since 2005 and lived there several times and in the manager's unit and on the farm. When the landlord is away working, the rental unit will be left vacant, however the landlord's daughter has a medical condition but if she is able, she will stay at the rental unit in the winter. A medical note setting out the landlord's daughter's medical condition has also been provided for this hearing, and the landlord testified that his daughter can navigate stairs except when in medical distress.

The landlord further testified that the tenant's dispute states that there are other properties that the landlord's family could occupy, however on the resort there are 3 residential units; one is the rental unit, with an adjacent suite next door. The adjacent suite is not big enough for the landlord's family, and the tenants who occupy it have a new born baby. The other suite has been for managers of the property, who live in that suite full time. The landlord is also part owner of a 540 square foot cottage which is rented year around.

The landlord is aware of compensation required to the tenants and the consequences of not using the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property. The landlord wants to occupy the rental unit for the landlord's family; and that's the plan.

The agent of the second named landlord company (JS) manages the rental property, and testified that there were incidents between the children of the tenants and the landlord's agent (JS), 2 months prior to the issuance of the Notice to end the tenancy, and the incidents are not related. The Notice to end the tenancy was given due to the points set out in the evidence, which are valid reasons.

The landlord (JS) had given a letter to the tenants to end the tenancy with several points, however that was due to a zoning matter which permits short term rentals, not long term except for the owner. It is not possible to offer the residence for a long-term tenancy.

TENANTS' EVIDENCE:

The first tenant (SB) testified that the tenants moved into the rental unit in June, 2017 and paid a security deposit in the amount of \$450.00 to the landlord's secretary, and have been paying \$900.00 per month, payable on the 1st day of each month. The tenants were also given permission to access most of the resort.

On April 13, 2021 the tenants were provided with a letter stating that new managers were taking over.

The Notice to end the tenancy arose out of a dispute that the tenants had with the managers, and the landlord is not acting in good faith. The parties talked at the beginning of 2021 about signing another tenancy agreement because the landlord didn't have one on file. On May 8, 2021, the other tenant had an issue with the eldest daughter of the managers (JS). The other tenant tried to find out what was going on, and the landlord's manager (JS) over-reacted.

The first notice to end the tenancy was a letter dated July 13, 2021 which the tenants found posted to the door. It was accompanied by an Acknowledgement for the tenants to sign away all their rights to dispute it. Copies have been provided for this hearing. The letter states that it is formal notification of eviction for the following reasons:

1. "The building is to be sold in the imminent future and will be undergoing renovations in preparation for new uses.
2. We have reviewed your residency and found that you are not legal tenants of the suite, staying under a friends and family deal that was intended to be a temporary arrangement and is far below par rental value, in fact not even contributing anything to utility costs.
3. We also found that you were formerly evicted by the family members who had extended this informal offer and permitted you to stay on for several years, and the owner of (JVI) back in March 2021 with 3 months notice and did not respect such notice.
4. We have received numerous complaints about your conduct on the property by both owners and guests of (BBR)."

The attached Acknowledgement indicates that the tenant(s) have received the notice of eviction and agree to fully vacate the property by September 15, 2021, with instructions to sign and return the Acknowledgement by no later than July 14, 2021. The Acknowledgement is not signed.

Three days later the tenants received another letter dated July 16, 2021, a copy of which has also been provided as evidence for this hearing. It states, among other things, that the July 13, 2021 eviction is binding, considered legally delivered, and that the tenants must fully vacate by September 15, 2021. The tenant responded in writing saying that it was illegal, and the tenants were still open to discussing a new tenancy agreement. A copy has also been provided for this hearing dated September 2, 2021. Following that, the owner gave a new notice to end the tenancy following the Residential Tenancy Branch guidelines.

The reason for ending the tenancy as stated in the Two Month Notice to End Tenancy for Landlord's Use of Property can be valid, but is not in good faith, considering the way it happened. The relationship with the owner (DB) was good until that grievance took place. The tenant further testified that the Policy Guideline #9 which was provided by the owner to the tenants regarding Licenses to Occupy says it is possible that a tenancy exists.

The second tenant (TB) testified that the tenants agreed to increase the rental amount, and the landlords said that it would increase significantly more than allowed by the Residential Tenancy Branch. Therefore the tenant believes the landlords are trying to evict so they can get double the price.

The landlords have made a number of attempts to require the tenants to move out. The letter from the landlords dated July 13, 2021 made the tenants feel coerced and bullied into signing the Acknowledgement. Everything changed, such as taking away facilities, an increase in rent, and then after the conflict with the kids, the landlords evicted with no evidence of reasons, and again for personal use. The Notice was not issued in good faith. The landlords said that it was not a tenancy, and now it is, but the landlord also said the property was going to be sold. When intimidation didn't work, the landlord (DB) said he would occupy it. He'll only keep it for 6 months and then rent on Air BNB.

The tenants next to the rental unit have said they plan to stay for several years, and they still have access to facilities that are not provided for the tenants. The landlords have never told the tenants that the rental unit is only zoned for owners; that was never communicated to the tenants effectively, and the landlord continues to engage in long-term tenancies in the suites. Everyone prior to this tenancy has lived there long-term.

The landlord (DB) attends the property irregularly and stays 1 to 3 days at a time to look after the vineyard and property.

The landlord has given 4 days notice to take away parking and has been returning all of the tenants' mail. They have also been harassing the tenants' guests and threatening to tow their vehicles, as well as charging a \$20.00 parking fee for the tenants' guests. The landlord said that he will use any means to remove the tenants if the Residential Tenancy Branch doesn't rule in the landlords' favor.

The tenants' witness testified that she is familiar with the parties and believes that the landlord's daughter could occupy the rental unit and navigate the stairs as long as she's feeling well. The managers of the resort would be able to ensure that she could live there with Life Alert or something, and has a medical support team. The witness has not seen the landlord's daughter a lot, but testified that her abilities are unpredictable, and she would not be capable of living independently during an episode. The witness has some medical experience, having worked in pharmacy and as an emergency medical responder. The witness' opinion is that the landlord's daughter has struggles.

The witness was asked to mediate between the parties however it was unfortunate that when the witness met with the landlord (DB) in December, 2021, the witness didn't

understand that he wanted mediation, but wanted the witness to talk to the tenants. At that time, the witness was not aware that the landlord's daughter wanted to live at the resort, but was under the impression that she was going to work up north with her sister.

SUBMISSIONS OF THE LANDLORDS:

The landlord (DB) has provided a letter addressed to the Residential Tenancy Branch dated March 16, 2022 submitting that the landlord's daughter is able to occupy the rental unit; is deserving of a chance at building self-esteem with the support of the managers; that the landlord does not relinquish the right and desire to occupy the rental unit for family use to care for the business interests; and asks that the tenants' application be dismissed. It also requests that I consider Residential Tenancy Policy Guideline #9 - Tenancy Agreements and Licenses to Occupy.

Analysis

Firstly, dealing with Residential Tenancy Policy Guideline #9, which states, in part:

"Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

Other factors Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

In this case, there is no question that a family relationship exists, however the parties agree that the tenants have had exclusive possession of the rental unit and have been paying a fixed amount of rent. The landlord (DB) testified that rent was \$900.00 per

month, but was supposed to be \$1,100.00, and did not know about any possible rental arrears, leaving it to the managers to provide that testimony. The landlord (DB) also testified that no security deposit had been collected from the tenants, which is disputed by the tenant (SB) who testified that the tenants moved into the rental unit in June, 2017 and paid a \$450.00 security deposit to the landlord's secretary. No one has provided any supporting evidence of a security deposit, however given that the parties agree that a fixed amount of rent is payable, I find that a tenancy agreement exists.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must establish good faith intent to use the rental unit for the purpose contained in the Notice.

Considering the evidentiary material, I accept the testimony of the tenants that the landlords have expressed several reasons for ending the tenancy. In July, 2021 the written reasons include selling, renovations, the tenants are not legal tenants, failure to accept a previous 3 month's notice to vacate, and complaints by the owners and guests of the property. In order to end a tenancy, a landlord must use the approved form, and therefore, any previous letters asking the tenants to vacate are not legal.

The letter from the landlord (DB) dated December 7, 2021 accompanied the Notice served on the tenants sets out other reasons, such as no rental agreement, refusal to vacate previously, and failure to pay the extra \$200.00 per month increase when the tenants moved from one rental unit to the current rental unit. However, it also states that the landlord's daughter has been offered a position with the management of the resort, and that the landlord's farm had recently sold.

I also refer to Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part that the *Residential Tenancy Act* allows a landlord to end a tenancy if the landlord intends in good faith to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit. It also states that the *Act* does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

In this case, although the landlord's daughter may not be in a physical condition to enable occupying the rental unit alone full time, the landlords have the right to occupy it and to have the close family member occupy it, but may not leave it vacant or rent it to anyone else on a short-term or long-term basis.

I am satisfied that the landlords are acting in good faith and intend to occupy the rental unit when in the area, and for the landlord's daughter to occupy it, and have no ulterior motive for ending the tenancy. The tenants' application is dismissed.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the law. Therefore, I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

The landlords are required by law to provide the tenants with compensation equal to 1 months rent.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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 09, 2022

Residential Tenancy Branch