



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On February 24, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

Both Tenants attended the hearing, and R.N. (co-owner of the rental unit) attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Tenant J.S. advised that the Landlord was served with the Notice of Hearing package by registered mail on or around March 7, 2022, and R.N. confirmed that the Landlord received this package in late March 2022. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing package.

She then advised that their evidence was placed in the Landlord's mailbox on May 18, 2022, and R.N. confirmed that the Landlord received this evidence. Based on this undisputed testimony, as this evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

R.N. advised that the Landlord did not submit any documentary evidence for consideration on this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on July 1, 2021, and that the tenancy was currently a month-to-month agreement. Rent was presently established at \$2,800.00 per month and was due on the first day of each month. A security deposit of \$1,400.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants were served the Notice by being mailed on February 9, 2022. The reason the Landlord served the Notice is because "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)." The effective end date of the tenancy was noted as April 30, 2022.

R.N. initially advised that the Landlord served the Notice because his immediate family would be coming from India and that it was “more convenient” for them to live in the rental unit. As well, she stated that the Landlord’s business is closer to the rental unit, so it would be easier for them. These were all the submissions that R.N. made at that point.

When she was asked to elaborate on who the close family members were, she stated that it was the Landlord’s parents. She indicated that they were elderly and could not care for themselves, so the Landlord would take care of them. She testified that they would be flying in from India and arriving on June 22, 2022; however, there was no documentary evidence submitted to support any of these plans.

She then read from an email that the Landlord sent to the Tenants on February 5, 2022, where the Landlord stated that “it is best for us to renovate properly once and for all rather than repeatedly have to deal with small issues. We will also have family coming from abroad in the spring, so please consider this your 2 month notice.”

She testified that the Landlord currently lives in a three-bedroom house with three kids, and that it is not large enough to additionally house the Landlord’s parents. As the rental unit is much bigger, it would be more suitable for the Landlord’s family and parents to move in to occupy. She then stated that the Landlord listed the property, that they are currently living in, for sale on April 3, 2022, and that it has not yet sold.

J.S. read from their statement and submitted that there were numerous repairs required on the rental unit that the Landlord will not address, despite being informed by the Tenants in writing. As they were advised that the Landlord intends to eventually demolish the rental unit, it is their speculation that the Landlord is refusing to make any repairs to the rental unit to bring it up to a reasonable health, housing, and safety standards. She testified that the Landlord previously threatened them with eviction on December 7, 2021, regarding their repair requests. This text message was submitted as documentary evidence and in it, the Landlord stated “If you don’t want to live in we can give you a 2 months notice..” Moreover, she testified that the Landlord’s listing for sale of their property actually lists the house as a five-bedroom, three-bathroom property, which is contrary to what R.N. testified to.

R.N. then confirmed that the property the Landlord is selling is listed as a five-bedroom, three-bathroom property; however, they consider it as a three-bedroom house only because there are a number of additional rooms that they do not use.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Moreover, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I must turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

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... 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... 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.

When reviewing the evidence and submissions before me, I note that R.N.'s initial testimony was general, vague, and extremely brief with little detail. It was not until she was prompted with questions that she provided any detailed information that was relevant to the reason on the Notice. Moreover, only after being prompted did she mention that the Landlord's intention was to move into the rental unit after the effective date of the Notice of April 30, 2022. Given this testimony, and as the Notice was served in February 2022, it would be reasonable to conclude that plans would have been made to prepare for the impending move. However, she did not at any point during the hearing mention anything about having taken steps to move for after April 30, 2022.

While she advised that their current property was listed for sale on April 3, 2022, I find this to be somewhat late given the fact that they were supposed to move into the rental unit within a reasonable period of time after April 30, 2022. Furthermore, what I find to be most concerning is that R.N. provided untruthful testimony regarding the size of the property being sold, and only corrected this when the Tenants provided opposing testimony. I find that these inconsistencies above, and the dubious testimony, cause me to question the truthfulness and credibility of R.N.'s submissions on the whole. In addition, I note that the Landlord has not submitted any documentary evidence to support any of this testimony that R.N. provided.

I also note that she testified that the Landlord's parents would be arriving on June 22, 2022. Given that I am already doubtful that the Landlord made any plans to move into the rental unit after the effective date of the Notice, based on R.N.'s questionable testimony, it is obvious that the Landlord's close family members had no plans to move in and occupy the rental unit within a reasonable period of time after April 30, 2022. Additionally, as there also has been no documentary evidence provided to support the testimony that the Landlord's close family members had the intention of moving from India, I find that I am even more doubtful of the reliability of R.N.'s submissions.

Finally, I note that the Tenants made submissions that it was their belief that the Landlord served this Notice due to their requests for repairs to the rental unit that were ignored by the Landlord. They provided documentary evidence to support their position that the Landlord threatened them with eviction due to their requests. Most importantly, I note that R.N. even read from an email that the Landlord sent to the Tenants on February 5, 2022, where the Landlord stated that "it is best for us to renovate properly once and for all rather than repeatedly have to deal with small issues." I find this email

stands out as being suspicious, and supports the Tenants' assertions that R.N.'s testimony was likely created to disguise an ulterior motive for serving the Notice. When weighing the totality of the evidence and submissions before me, I am skeptical of R.N.'s testimony, and I find it to be extremely untruthful. As such, I am satisfied that the Notice was not served in good faith.

Moreover, while I have not made any findings of repair requests that were allegedly neglected, R.N. was cautioned about the Landlord's obligations to provide and maintain a residential property that complies with the health, safety, and housing standards required by law under Section 32 of the *Act*.

Ultimately, as I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice, I find that the Notice of February 9, 2022 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of February 9, 2022 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 7, 2022

Residential Tenancy Branch