



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on July 30, 2021 for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord.

The parties listed as attending on the style of cause page of this Decision were present, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

This dispute was originally heard by another arbitrator on December 2, 2021, and the arbitrator issued a Decision on December 8, 2021. The other arbitrator dismissed the tenant's application, upheld the 2 Month Notice and, as a result, issued the landlord an order of possession of the rental unit, effective December 31, 2021.

The Decision of December 8, 2021 was appealed to the Supreme Court of British Columbia (BCSC). The evidence shows the BCSC issued a stay of the order of possession on January 5, 2022, and on March 20, 2022, issued a Judgment finding the Decision of December 8, 2021, was patently unreasonable. In that Judgment, the BCSC set aside the original Decision and order of possession and remitted the matter to the Residential Tenancy Branch (RTB) for a new hearing.

The parties were informed that for this new hearing, the merits of the tenant's application and the landlord's 2 Month Notice would be considered anew and that I would not take into account any findings in the previous Decision, as it has been set aside.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Matter –

The landlord confirmed receipt of the tenant's 62-page evidence package and the landlord also confirmed that he had not provided evidence for the hearing. I note there was no evidence submitted by the landlord for the original hearing.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Background and Evidence

Although no written tenancy agreement was filed in evidence, the testimony indicated the tenancy began in April 2015 and current monthly rent is \$800. The rental unit is part of a 2-unit home.

The landlord submitted that currently he and his partner occupy the other unit in the home.

The tenant confirmed that she was served on July 24, 2021 with the 2 Month Notice dated July 24, 2021, by personal service. The effective vacancy date on the 2 Month Notice is listed as September 30, 2021. The tenant disputed the 2 Month Notice within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason for issuing the 2 Month Notice is that the rental unit will be occupied by the landlord or the landlord's spouse. Filed in evidence was a copy of the 2 Month Notice.

The tenant indicated that she was disputing the 2 Month Notice because she does not believe the landlord was acting in good faith.

In accordance with the Rules, the landlord proceeded first in the hearing to provide support for the landlord's Notice.

During the hearing, the landlord's statements included the following:

- His original intention was to sell the house, but was informed by his realtor that negative comments had been made about the tenant and rental unit, more particularly that the tenant had 5 cats and the smell was off-putting to potential buyers.
- At that point, the landlord decided to move into the other unit in the home temporarily as he was moving to another part of the province. That the landlord has lived in that unit for 7 months now, which proves he has no ulterior motive.
- There was "no chance in hell" he would ever rent again after what he has gone through with not only this tenant, but the former tenant who lived in the second unit.
- That the other tenant tricked him into renting him the other unit as he, the other tenant, intended on buying the property. The landlord described the other tenant as a squatter who used the landlord to get free rent, and that the other tenant never intended on buying the property at all as they had agreed.
- That the landlord was having to renovate and make repairs to the second unit as the other tenant described as a squatter left that unit in a mess.
- That the tenant is paying only \$800, with utilities included, which is less than ½ of what other rental units go for in that market.
- That the landlord was intending on buying another house in another part of the province once the residential property sold. Later the landlord became ambivalent about moving due to the fire and flood risks in the part of the province where his family lives.

The landlord also responded to a part of the tenant's evidence package. The evidence referred to was a statement made under Oath by another advocate regarding a conversation with the landlord's realtor on December 8, 2021. The landlord said those statements made to another advocate by the landlord's real estate agent was hearsay.

In the Oath filed in evidence, the landlord's realtor told another advocate in a phone call on December 8, 2021, that the "listing" was currently off the market for now, as the landlord is currently evicting both tenants. The Oath further states that the realtor told the advocate that the tenant was being evicted because they were "giving the landlord grief".

The Oath further states that the realtor commented that the tenants were not the "type of people you want staying there, with a chuckle in his voice". The Oath further states that the realtor said the listing should be back on the market soon and maybe even in January.

The landlord submitted that even when he is able to re-gain the rental unit, it will take about 3-4 months of renovations, "even if he does sell it".

Cross-examination of the landlord –

In responding to the advocate's questions, the landlord confirmed that he would not be able to live in the rental unit during the 3-4 months of the planned renovations, and confirmed that he wants to renovate and repair the rental unit once empty.

The landlord confirmed that he had a conversation with a poverty law advocate (JC) on August 30, 2021, and in particular, confirmed paragraphs 4 and 5 of the affidavit. The affidavit is reproduced in part as follows:

1. I am the Poverty Law Advocate assisting [] with her Two Month Notice to End Tenancy For Landlord's Use of Property issued by the landlord, []
2. I spoke to [] on August 30th, 2021 at approximately 1:00 PM when he attended my office in person at []. On this date, I spoke briefly with him regarding []'s eviction and informed him that I was unable to speak with him at that moment and I would phone him later that day.
3. I phoned [] at 2:51 PM on August 30th, 2021. I called the phone number, [], that was provided on []'s notice. [] answered the phone and I confirmed it was him I was speaking to at the start of the call. I recognized []'s voice on the phone as the same person who came to my office earlier that day.
4. When I spoke to [], he confirmed [] current address, [] B.C. He then confirmed for me that it was listed for sale at this time.
5. [] also stated to me that he was evicting [] from her residence because he wanted to renovate the premises and he intended to sell it.

[reproduced as written except for anonymizing personal information to protect privacy]

The advocate asked the landlord to confirm when the "For Sale" sign was removed from the yard of the residential property, and the landlord confirmed he did not know, although he confirmed being aware of the stay of the order of possession by the BCSC. The landlord stated the listing was cancelled in October 2021 and that realtors are slow in taking down signs. The landlord denied the sign came down due to the stay issued by the BCSC.

The landlord confirmed issuing the other tenant of the residential property a 2 Month Notice on the same day.

The landlord confirmed that he wanted the whole house to convert to a single family dwelling and that his family would be using the rental unit when they visited from out-of-town. The landlord confirmed that he and his partner are living in the 1 bedroom unit, have full use of the garage, which has an additional washroom, and also which has now been converted to a gym and storage unit.

The landlord confirmed that in the local current rental market, he could easily get double the amount of monthly rent the tenant pays, but that is moot as he is not selling.

The tenant's advocate's arguments and submissions –

The advocate referred to his written submissions, stating that the landlord allowed the other unit in the property to sit empty for 3 months prior to moving in, and that as of November 14, 2021, the residential property was still listed for sale. The advocate submitted that the landlord had previously testified that he had been trying to sell the home since May 2020. The advocate submitted that the listing sign came down one day after the stay of the order of possession was issued by the Supreme Court on January 5, 2022.

The advocate pointed out that the landlord did not disagree with anything in the poverty law advocate's affidavit.

The advocate submitted that the landlord's ulterior motive is to renovate and sell, as shown by his statements to the poverty law advocate, as he never mentioned he intended to move-in.

In rebuttal, the landlord said he and the tenant have a very acrimonious relationship, making it very difficult to live in the same property.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, and policy, on the balance of probabilities.

Upon review of the 2 Month Notice, I find the Notice was completed on the prescribed form in accordance with the requirements of section 52 of the Act [form and content].

When a tenant disputes a 2 Month Notice within the timeline provided for under the Act which done in this matter, the landlord bears the onus to prove that the Notice is valid, was issued in good faith, and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled.

Section 49 (3) states a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Tenancy Policy Guideline 2A provides that a landlord may end a tenancy if they in good faith intend to use the rental unit as a “living accommodation or as part of their living space”.

Policy Guideline also states that “good faith means a landlord is acting honestly, and they intend to do what they say they are going to do”.

Policy Guideline 2A further provides as follows:

B. GOOD FAITH

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.

When reviewing the relevant evidence, I give significant weight to the law poverty advocate’s affidavit, which was not only uncontested by the landlord, but confirmed. The landlord confirmed in his conversation on August 30, 2021, with the law poverty advocate, that the residential property was listed for sale at this time and that he was evicting the tenant because he wanted to renovate the premises and he intended to sell it. I find the motive to end the tenancy was not to occupy, but to renovate and sell.

The undisputed submission of the advocate was that the landlord testified at the original hearing he had been trying to sell the home since May 2020.

It is not necessary to consider the good faith of the landlord as there was no intent to occupy the rental unit at the time the Notice was issued.

While the landlord said that his circumstances changed sometime after issuing the 2 Month Notice as he moved into the other unit, that is not relevant as that occurred many months after the 2 Month Notice was issued.

As I have found that the landlord submitted insufficient evidence that he or a spouse intended to occupy the rental unit as a living accommodation when the Notice was issued, I **ORDER** that the 2 Month Notice dated July 24, 2021, for an effective move-out date of September 30, 2021, is cancelled, and it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The tenant's application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenancy will continue 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 22, 2022

Residential Tenancy Branch