



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, DRI-ARI-C, LRE, OLC**

Introduction

This hearing was convened as a result of the Tenants' Applications for Dispute Resolution, made on March 3, 2022 and March 31, 2022 (the "Applications"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated March 31, 2022;
- an order restricting or suspending the Landlord's right to enter;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation; and
- an order to dispute a rent increase.

The Tenants L.W., D.W., the Tenants' Advocate G.L., the Tenants' Counsel P.L., and the Landlord F.K. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenants' Applications and documentary evidence. The Landlord confirmed that he had only submitted a copy of the Two Month Notice in his documentary evidence, which the Tenants confirmed receipt of. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

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 is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice.

The Tenants' request for an order restricting or suspending the Landlord's right to enter, and an order that the Landlord comply with the *Act*, tenancy agreement or regulation, and to dispute a rent increase are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month, pursuant to Section 49 of the *Act*?
2. If the Tenants are not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2017. The currently Landlord purchased the 10 unit rental property on November 1, 2021. Currently, the Tenants pay rent in the amount of \$725.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$362.50 which the Landlord currently holds. The tenancy is still ongoing.

The Landlord testified that he served the Tenants with a Two Month Notice to End Tenancy on March 31, 2022 by posting it to the Tenants door. The Two Month Notice is dated March 31, 2022 and has an effective vacancy date of May 31, 2022. The Tenants

confirmed having received the Two Month Notice on March 31, 2022. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord or the Landlord's spouse.

The Landlord stated that he is seeking to end the tenancy so that he and his family can have somewhere to stay and vacation while they are in town. The Landlord explained that he has been assessed by his Doctor and that it is recommended that the Landlord take time away to relax. The Landlord stated that he has another residence where he has vacationed in the past, however, he would like to have somewhere else to stay and be able to explore the City with his family.

The Tenants' Counsel submits that the Landlord has served the Two Month Notice in bad faith. The Tenants' Counsel stated that the Tenants were served with a tenancy agreement dated March 21, 2022 which required the Tenants to pay \$1,000.00 rather than their current rent of \$725.00. The Tenants' Counsel stated that the Tenants refused to sign the new tenancy agreement as they did not consent to the rent increase which was above the allowable amount permitted under the law. The Tenants' Counsel stated that subsequently, the Landlord served the Tenants with the Two Month Notice on March 31, 2022.

In addition, the Tenants' Counsel submits that the rental property had a vacant unit which is comparable to the Tenants' rental unit, and that the Landlord had the opportunity to occupy that unit instead of ending the Tenants' tenancy. Furthermore, the Tenants' Counsel stated that there is currently another unit which has recently become available as well. Therefore, the Landlord has other options rather than displacing the Tenants.

The Landlord confirmed that the Tenants were provided with a new tenancy agreement, on March 21, 2022, however, responded by denying that he is motivated to increase the Tenants' rent, and that he was uncertain as to the status of the other units at the rental property as some of the occupants are overholding and not paying rent. The Landlord reiterated that he owns the building and just needs a place to stay while in town.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may 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.

The Landlord served the Tenants with the Two Month Notice on March 31, 2022 with an effective vacancy date of May 31, 2022. The Tenants confirmed having received the notice on March 31, 2022 and applied to dispute the Two Month Notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the *Act*, and was disputed within the appropriate timelines.

In this case, I accept that the parties agreed that the Landlord served the Tenants with a tenancy agreement dated March 21, 2022 which contained a term requiring the Tenants to pay rent in the amount of \$1,000.00 per month instead of \$725.00.

I note that once a property is sold, the buyer becomes the new landlord and the tenancy continues under the same terms. The buyer and the tenants don't need to sign a new tenancy agreement, but may do so if they both agree. I find that the Tenants are not required to sign a new tenancy agreement with the Landlord, nor are they obligated to agree to a rent increase which is above the allowable amount.

According to the Residential Policy Guideline 2A requires the Landlord to Act in 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. 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. 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.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.”

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that he or his spouse intend to occupy the rental unit for at least 6 months. Instead, the Landlord indicated that he would use the rental unit when he is in town, with no indication as to when or how often the rental unit would be used. The Landlord stated that he has other properties where he also vacations.

Instead, I find it is more likely than not that the Landlord was motivated to increase the Tenants’ rent, and that once the Tenants refused to sign the new tenancy agreement, the Landlord served the Two Month Notice only 10 days later. Had the Landlord truly intended to occupy the rental unit for his own use, it would seem counter productive to serve the Tenants with a tenancy agreement to continue the tenancy within the same month.

Lastly, the Landlord stated that there are several overholding occupants at the rental property who are not paying rent. I find that the Landlord would have the opportunity to occupy a comparable unit once they become vacant.

In light of the above, I cancel the Two Month Notice, dated March 31, 2022. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenants' Application is successful. The Two Month Notice issued by the Landlord dated March 31, 2022 is cancelled. 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*.

Dated: June 16, 2022

Residential Tenancy Branch