



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1333686 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use dated March 1, 2022 (the "Two Month Notice") pursuant to section 49;
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlord and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The Tenants' daughter-in-law SV attended this hearing as an interpreter for the Tenants.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibits unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified she was not served with notice for this hearing. The Landlord stated she found out about this hearing when she received an email from the Residential Tenancy Branch a week before the hearing. The Landlord submitted a copy of an email she received from the Residential Tenancy Branch, dated June 9, 2022. Records indicate that the Landlord was given the details for this hearing by the Residential Tenancy Branch over the phone on the morning of the hearing.

The Tenants acknowledged that they did not send the notice of dispute resolution proceeding package or their documentary evidence to the Landlord. The Tenants stated they did not know they had to serve the Landlord with those documents.

I asked the Landlord whether she wished to seek an adjournment in the circumstances so that she can have more time to prepare her evidence and call potential witnesses. The Landlord told me she did not wish to seek an adjournment.

Based on the foregoing, I find that the Landlord has been sufficiently served with notice of this hearing by the Residential Tenancy Branch, pursuant to section 71(2)(c) of the Act. However, I find that the Tenants did not serve the Landlord with a copy of their documentary evidence in accordance with the Act. Accordingly, I exclude all documentary evidence submitted by the Tenants from consideration for the purposes of this application.

The Landlord testified she sent her documentary evidence to the Tenants via registered mail on June 16, 2022. The Landlord submitted a registered mail receipt and tracking number in support. That tracking number is referenced on the cover page of this decision. The Tenants acknowledged receipt of the registered mail package. I find the Tenants to be sufficiently served with the Landlord's documentary evidence pursuant to section 71(2)(c) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancel the Two Month Notice?
2. If the Tenants are unsuccessful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced with a previous landlord in August 2015. The Tenants currently pay \$1,120.00 for rent, due on the first day of each month.

The Landlord testified that her company, 1333686 B.C. Ltd., purchased the rental unit in December 2021. The Landlord testified she owns 50% of the voting shares in 1333686 B.C. Ltd., and that her two sons each own 25% of the voting shares.

The Landlord stated that when the rental unit was purchased, she made her realtor tell the Tenants that the rental unit is for the Landlord's use. I understand the Landlord's evidence is that a two month notice had been issued in writing to the Tenants in December 2021. The Landlord stated she told the Tenants verbally in January 2022 that she was moving in. The Landlord testified that the Tenants refused to move out and refused to open their door to talk to her.

The Landlord stated she tried talking to the Tenants about increasing their rent because they were paying what she considered to be very little rent. The Landlord stated she talked to the Residential Tenancy Branch, she knew the maximum rent increase is 1.5%, and she had tried talking to the Tenants to increase the maximum rent by more than 1.5% but it "did not work out". The Landlord stated she did not ask for a 1.5% increase in rent, but the Tenants started paying an extra \$20.00 per month.

The Landlord testified that on March 1, 2022, she served a copy of the Two Month Notice on the Tenants. The Landlord stated she did not communicate with the Tenants after that.

The Landlord stated that the plan is for her to move into the rental unit. The Landlord testified she currently rents and pays \$1,500.00 per month for her own rent. The Landlord testified 1333686 B.C. Ltd. took on a private mortgage in order to purchase the rental unit and pays \$1,575.00 in mortgage payments each month. The Landlord stated the mortgage interest will increase from 10% to 18% in July 2022. The Landlord stated she did not wish to purchase the rental unit in her own name due to the private mortgage. The Landlord stated she cannot afford both her own rent and the mortgage.

The Tenants acknowledged receiving a copy of the Two Month Notice on March 1, 2022. The Tenants' evidence was that they had never been told about the Landlord intending to move into the rental unit prior to receiving the Two Month Notice.

The Tenants testified they met the Landlord for the first time in December 2021. The Tenants stated they gave the Landlord two cheques, one for December 2021 and one for January 2022. The Tenants indicated they made a mistake with the cheques, so the Landlord came back in January 2022 to pick up new cheques. The Tenants testified that during the Landlord's visit in January 2022, the Landlord never said anything about moving into the rental unit.

The Tenants testified that on February 10, 2022, they began receiving a series of text messages from the Landlord asking to increase the rent. During the hearing, the Tenants read these text messages into evidence. In the text messages, the Landlord asked for a rent increase to \$1,400.00 per month. The Tenants replied saying they would be "grateful" if the Landlord will send all messages via email. The Landlord refused. The Landlord wrote that she had been "very clear" and that it would be "fair" for the Landlord too as she had to pay her mortgage. The Landlord wrote she was asking for "average market rent" and asked the Tenants to "google [their] own area". The Tenants replied that it was "against Canadian law" to increase rent by more than 1.5% in 2022. The Landlord wrote back saying that she "know[s] the Canadian rules", that it looks like the Tenants are "used to literally staying for free", that "you are the only tenants not cooperating with us", that "you think you can get away living for free for more years", and that if the Tenants "do not cooperate", the Landlord will proceed with the "tenancy board".

The Tenants testified these text messages were sent from the Landlord's cell phone number. The Tenants stated they thought perhaps another person, such as the Landlord's husband or son, had sent these messages because the tone was "totally different", "very rude", and "very aggressive".

The Tenants emphasized they had asked the Landlord for email communication as that was the "formal way". The Tenants expressed that due to their language barrier, it would not have been easy to communicate verbally in English. The Tenants confirmed they did not receive any written notice from the Landlord prior to the Two Month Notice. The Tenants also stated that there are mistakes on the Two Month Notice. One of the Tenants' names is spelled incorrectly on the Two Month Notice, and the effective date of the Two Month Notice is May 1, 2022, when it should be May 31, 2022.

The Tenants testified Landlord had called other tenants in the building and tried to evict or buy them out. The Tenants testified that they believe either the Landlord or family members of the Landlord also own or had owned other rental units in the same building.

The Tenants testified their neighbour was “very angry”, was pressured to move out and will be vacating before the end of June 2022. The Tenants indicated that two families have already moved out.

The Landlord acknowledged that she was the one who had sent the text messages read into evidence by the Tenants. When questioned as to what she meant by her statement that the Tenants were living rent free, the Landlord stated that she was being “sarcastic”.

The Landlord denied that she or her family members owned other units on the rental property.

The Landlord expressed frustration that the Tenants “made this so difficult” and stated she did not want to talk to the Tenants anymore. The Landlord reiterated that she purchased the rental unit to live in it, that the Tenants are not paying “market value”, and that if they don’t want to move out, they can give her “market value”. The Landlord stated that she “just want[s] [her] place back”.

The Tenants questioned the Landlord’s claim that she could not pay her rent and mortgage. The Tenants stated that the first thing they would think about if they were to buy a property is how they would pay the mortgage.

Analysis

1. Are the Tenants entitled to cancel the Two Month Notice?

Pursuant to section 49(4) of the Act, 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.

Section 49(1) of the Act contains the following definitions:

- A “landlord”, for the purposes of section 49(4), is a family corporation that, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.
- A “family corporation” is a corporation in which all the voting shares are owned by (a) one individual, or (b) one individual plus one or more of that individual's brother, sister or close family members.

- A “close family member” is (a) an individual’s parent, spouse or child, or (b) the parent or child of that individual’s spouse.

In this case, the Landlord has not submitted any documents to prove that 1333686 B.C. Ltd. is a family corporation or that the Landlord owns 50% of the voting shares in it. However, I accept the Landlord’s testimony under oath that this is likely the case.

I note that section 1 of the Act defines a “landlord”, in relation to a rental unit, to include not only the owner of the rental unit, but also the owner’s “agent” or “another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement”. I find the Landlord, as an agent and owner of the corporate landlord, 1333686 B.C. Ltd., to be a “landlord” within the meaning of section 1 of the Act, and hence can be named as such for the purposes of this application.

Section 49(7) of the Act requires the notice given by the landlord under section 49(4) to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant’s notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant’s notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

In this case, I find the Two Month Notice complies with the requirements set out in sections 52 of the Act. I note there is a minor spelling error with one of the Tenants’ names, and that the effective date should be May 31, 2022 instead of May 1, 2022 in order to comply with section 49(2)(a) of the Act. I find that these errors do not affect the validity of the Two Month Notice under section 52. I further find that the Tenants would have known of these errors and that it would be reasonable to make these two amendments under section 68(1) of the Act.

Based on the parties' evidence, I find that the Tenants were served with the Two Month Notice in person on March 1, 2022, in accordance with section 88(a) of the Act.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. Therefore, the Tenants had until March 16, 2022 to dispute the Two Month Notice. Records indicate the Tenants submitted their application on March 16, 2022. I find the Tenants made their application within the 15-day dispute period required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus is on the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states:

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)).

[...]

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.

When reviewing the evidence and submissions before me, I find it important to reiterate to the Landlord that the reason she chose to serve the Two Month Notice is because

the “Landlord 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” and that the burden of proof is on the Landlord to justify why the Two Month Notice was served.

However, when reviewing the Landlord’s testimony, much of it is related to her concerns about how “cheap” the Tenants’ rent is, the rent not being “market value”, and the burden of having to pay the mortgage for the rental unit.

Based on the evidence before me, I do not find the Landlord’s claim that the rental unit was purchased with the intention for her to move in to be credible. I make this finding on the basis that:

- the rental unit was purchased in late 2021;
- the Landlord acknowledged having sent text messages to the Tenants in February 2022 asking to raise their rent;
- the amount of rent increase sought by the Landlord (an increase to \$1,400.00 per month) was beyond the legally allowed increase of 1.5% for this year;
- the Landlord stated she sought advice from the Residential Tenancy Branch for ways to raise the rent and decided to try negotiating with the Tenants; and
- during the hearing, the Landlord stated that if the Tenants would not move out of the rental unit, they should at least give her “market value”.

The circumstances are also unusual in that the Landlord’s claim is she used her company, 1333686 B.C. Ltd., and obtained a private mortgage in order to purchase a residential property that she intended to live in. I find this claim to be less credible on a balance of probabilities.

I accept the Tenants’ testimony that the Landlord had not told them she wished to move into the rental unit either in writing or verbally prior to the issuance of the Two Month Notice. I find there is no documentary evidence before me to corroborate the Landlord’s claim that the Tenants had been previously notified in writing of the Landlord’s intention to move into the rental unit.

Furthermore, I do not find the above-described conduct of the Landlord to be consistent with a good faith intention to move into the rental unit for residential occupancy.

Although the Landlord repeatedly asserted that she wished to move into the rental unit, the Landlord provided insufficient evidence about why she wished to live in the rental

unit specifically. I find the Landlord to be ambivalent about moving into the rental unit even after issuing the Two Month Notice, based on her statement during the hearing that the Tenants could stay in the rental unit if they paid “market value”.

I reiterate to the Landlord that good faith under the Act “requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy”. In this case, I am satisfied that one of the reasons, if not the primary reason, for the Landlord to issue the Two Month Notice to end the tenancy was the fact that the Tenants did not pay what the Landlord considered to be “market rent” for the rental unit.

I am further satisfied that the evidence suggests the Landlord may be attempting to ending the tenancy in order to avoid her obligation to raise the rent legally in accordance with the Act. In reaching this conclusion, I find the Landlord’s comments below, as stated in the text messages sent to the Tenants in February 2022, which the Landlord acknowledged, to be particularly telling. The Landlord had stated that:

- it looks like the Tenants are “used to literally staying for free”
- “[the Tenants] are the only tenants not cooperating with us”
- “[the Tenants] think [they] can get away living for free for more years”
- if the Tenants “do not cooperate”, the Landlord will proceed with the “tenancy board”

Moreover, the Landlord confirmed during the hearing that she was being “sarcastic” when she had stated that the Tenants were living for “free”.

Based on the foregoing, I am satisfied on a balance of probabilities that the Landlord has an ulterior motive for ending the tenancy that is related to the amount of rent being paid by the Tenants. I find the Landlord has not met the burden of establishing good faith with no dishonest or ulterior motive for ending the tenancy.

Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

I note that under the Act, a landlord may apply for an additional rent increase if the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if such financing costs could not have been foreseen under reasonable circumstances. However, that is not the application before me in this dispute.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the Tenants have been successful in cancelling the Two Month Notice, I find that the Landlord is not entitled to an Order of Possession under section 55(1) of the Act.

3. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?

The Tenants seek an order that the Landlord comply with the Act, regulation, or the tenancy agreement. As I have already ordered the Two Month Notice to be cancelled, I find it is not necessary to issue any orders requiring the Landlord to comply with the Act, regulation, or the parties' agreement.

I dismiss the Tenants' claim under this part, with leave to re-apply.

4. Are the Tenants entitled to recover the filing fee?

The Tenants have been successful in cancelling the Two Month Notice. I award the Tenants reimbursement of their filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlord for the month of August 2022.

Conclusion

The Two Month Notice dated March 1, 2022 is cancelled and of no force or effect.

The Tenants are authorized to deduct \$100.00, on account of the filing fee awarded for this application, from rent payable to the Landlord for the month of August 2022.

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: July 11, 2022

Residential Tenancy Branch