Dispute Resolution Services

Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
- 2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, his son, the Tenants, and their Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice, personally served on March 16, 2022; and,
- the Tenants' Notice of Dispute Resolution Proceeding package personally served on April 6, 2022;

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all documents related to the hearing in accordance with the Act.

The Tenants included a one-page narrative as part of their evidence, but the Landlord testified that they did not receive this one page. I offered to read this one page to the Landlord. The Landlord listened to the contents of the letter and provided further testimony in regard to it.

Issues to be Decided

- 1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
- 2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
- 3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

I reviewed the tenancy agreement in this matter, and the tenancy began as a fixed term tenancy on December 1, 2011. The fixed term ended on November 30, 2012, then the tenancy continued on a month-to-month basis. The new Landlord purchased the residential property in October 2014. The parties confirmed that the monthly rent is \$1,862.00 payable on the first day of each month. A security deposit of \$850.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the child of the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was May 31, 2022.

The Landlord's son was the designated speaker for his father in this matter. He stated that the property was purchased so that, one day, he would be occupying the home. He said he is now 26 years old and he needs more privacy and space outside of his parents' home where he presently resides.

The son testified that his family did recently have a wedding, but his cousin had it at a booked venue, and they did not need the home for this event. The son stated they did not need the home to house relatives, as no relatives came from afar. There are no future weddings planned for the family. Instead, the son stated that he is a first-year

medical student, he has a partner, but he does not have any children. They are not married. The son testified that he and his partner will possibly be living together. They would need more space and privacy which he cannot get in his parents' home.

The son testified that he is not sure where his partner will be working, although she recently completed an interview at a firm where she was previously working in a co-op position.

The Tenants' Advocate testified that on March 21, 2022 they had a discussion with the Landlord and were told that the Landlord's family had relatives coming from afar for multiple weddings, and receptions. The Tenants were told that the Landlord needed the space to house these relatives.

The Tenants described that the Landlord lives directly across the street from the Tenants. The Tenants also know that the Landlord rents out the basement suite in their family home but, as far as they know, the Landlord has not evicted that tenant. The Tenants proffered that the Landlord's basement suite may be a better space for the son as opposed the rental property which is quite large.

Currently, the rental property has eight tenants, the Tenants' daughter, son-in-law, and children live on the main floor of the home, and the Tenants reside in the basement suite. It is a five-bedroom house with a kitchen upstairs and a kitchen downstairs. The Tenants are aware of other rental properties in the area where tenants have been evicted and the landlords have doubled the amount of rent for new tenants moving into the properties. The Tenants stated they know this information was given to the Landlord.

The Tenants submit that the son's move-in plans with his partner sound like they are still up in the air. The Tenants do not believe the Landlord has the good faith component that he intends to do what he stated in his reasons for ending this tenancy.

The Landlord's son's reply is that the two people living in his father's basement suite are family members and they do not have a father. The Landlord is not charging them rent. The Landlord's son states if it were a case that they want more rental money for the property, the Landlord would have been increasing the Tenants' rent in the past when permissible. They have not done that. The Landlord does not want to move different tenants into the rental unit who may cause stress to the Landlord. The Landlord's son said he cannot risk having the stress of having bad tenants in his life.

<u>Analysis</u>

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this matter. It states:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;
- • •
- (2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy
 - (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - *(i)* not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
 - • •
- (3) 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.

- (7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - ...

The Tenants were personally served with the Two Month Notice on March 16, 2022. I find that the Two Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on March 28, 2022 which was within the 15 days after receiving the Two Month Notice.

The Tenants made a claim that they did not believe the Landlord was acting in good faith when he issued the Two Month Notice. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

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.

• • •

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. <u>The onus</u> 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. (emphasis mine)

It is the Landlord's burden to prove that they have the good faith intention to occupy the rental unit as stated in their Two Month Notice. The Landlord initially told the Tenants that he had family coming from afar for a family celebration and they needed the space to house these people. The Landlord's son testified that it was always the Landlord's intention that one day he would be moving into the rental unit. He stated that that day has come, he is an on-line first year medical student, and he needs quieter space in which to live and study. The Landlord's son also states that his partner will *possibly* be moving in with him, but that they have no children. The house is a five-bedroom home with operating kitchens in the basement and on the main floor. At present the Tenants' daughter, son-in-law and children live on the main floor of the home, and the Tenants reside in the basement suite. The Landlord's son did not provide any other evidence of definitive move-in plans into the residential property.

The Landlord's son's testimony does not persuade me that the Landlord's stated purpose as noted in the Two Month Notice is real. I find the verbal reasons given to the Tenants have waivered and changed, and I do not find that the Landlord's son has made any definite plans for moving into the property. I find on a balance of probabilities that the Landlord has not proven that he has the good faith intention of his son occupying the residential property. Accordingly, I cancel the Landlord's Two Month Notice, and the tenancy will continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's Two Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 29, 2022

Residential Tenancy Branch