



Dispute Resolution Services

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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 Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Counsel and an articulated student for the landlord and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Section 55(1) of the *Act* states that if the landlord's Notice complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the Notice, the director must grant the landlord an order of possession.

Both parties agree that the tenants' served the landlord with their application for dispute resolution and evidence via registered mail. I find that the above documents were served in accordance with section 89 of the *Act*.

Counsel for the landlord testified that the landlord's evidence was served on the tenants by leaving it in a "safe spot" on July 5, 2022. The tenants confirmed receipt on July 6,

2022. I find that the tenants were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because receipt was confirmed.

Issues to be Decided

1. Are the tenants entitled to cancellation of the Notice, pursuant to section 49 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenants' application is dismissed or the Notice is upheld, and the Notice complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 2, 2014 with a different landlord. Both parties agree that the landlord and a co-owner (K.S.K.) purchased the subject rental property on May 4, 2021. Monthly rent in the amount of \$2,870.00 is payable on the first day of each month. A security deposit of \$1,300.00 was paid by the tenants. A written tenancy agreement was signed by the tenants and the previous landlord, and a copy was submitted for this application.

Both parties agree that the tenants were personally served with the Notice on May 25, 2022. The Notice states that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The Notice only lists tenant C.G. and mis-spells her last name. Tenants G.W. and J.S. are not listed. The Notice is signed by the landlord on May 25, 2022 and states that the tenants must vacate the subject rental property by July 31, 2022.

The tenants alleged that the landlord is not acting in good faith and testified that they do not believe the landlord's child is moving into the subject rental property. The tenants

testified that the subject rental property is in disrepair and that the landlord has never seen the subject rental property.

The tenants testified that the subject rental property has two kitchens and four bedrooms and is in need of serious renovation and repair. The tenants testified that it is not reasonable that the landlord's 20-year-old daughter will move into such a large house in need of extensive repairs.

The tenants testified that the subject rental property is currently for sale and has been for sale for 101 days. The tenants testified that the landlord cannot intend for his daughter to move in while the property is for sale. The tenants entered into evidence photographs of the subject rental property listed for sale.

The tenants testified that since they moved in they were always told that the subject rental property was going to be torn down and re-developed into a multi unit building. The tenants testified that one year ago K.S.K. told them that his intention was to demolish the house and build a multi suite dwelling.

The tenants testified that they believe the landlord wants the house empty because it is more marketable if it is empty and that prospective buyers want the property empty so they can increase the rent.

Counsel for the landlord submitted that the landlord is acting in good faith and that the landlord's daughter intends to move into the subject rental property.

Counsel entered into evidence a signed statutory declaration from the landlord which states that:

- The landlord and K.S.K. each had an undivided 50/100 interest in the subject rental property as of May 4, 2021,
- the landlord and K.S.K. disagreed with what to do with the property so the property was listed for sale on April 7, 2022 by realtor R.H.
- In April 2022 the landlord's daughter informed the landlord that she is planning on moving out of the landlord's home because she needs privacy.
- In anticipation of his daughter moving out, the landlord purchased K.S.K.'s 50/100 interest in the subject rental property on May 18, 2022, so that his daughter could move into the subject rental property.
- Before the May 18, 2022 purchase was completed the landlord asked realtor R.H. to remove the listing of the subject rental property.

Counsel for the landlord entered into evidence title searches confirming that the landlord and K.S.K. purchased the subject rental property in May of 2021 and that in May of 2022 the landlord was the sole owner.

Counsel for the landlord submitted that realtor R.H. was unable to remove the listing because it was a joint listing entered into by K.S.K. and the landlord and for it to be removed, K.S.K.'s signature was required. Counsel submitted that due to a dispute between K.S.K. and the landlord, K.S.K. refused to provide his signature and so the listing could not be removed.

Counsel for the landlord entered into evidence a signed statutory declaration from realtor R.H. which states:

- Realtor R.H. listed the subject rental property for sale at the request of the landlord and K.S.K. on April 5, 2022.
- On May 18, 2022 the landlord purchased K.S.K.'s undivided 50/100 interest and became the sole owner of the Property.
- Sometime before May 18, 2022 the landlord instructed realtor R.H. to remove the listing because the landlord's daughter intended to occupy the subject rental property.
- Realtor R.H. was unable to remove the listing without S.K.S.'s signature because the listing was a joint listing and could not be removed without the authorization of both S.K.S. and the landlord.

Counsel for the landlord entered into evidence a signed statutory declaration from the landlord's daughter which states that:

- The landlord's 20 year old daughter currently resides with the landlord and wishes to move out for privacy reasons.
- The landlord's daughter and the landlord agreed that she would move into the subject rental property.

Counsel for the landlord submitted that:

- The landlord has not owned the property for a substantial amount of time and never told the tenants that he intended on re-developing the subject rental property.
- The tenants have not produced any documentary evidence that requested repairs were not complete.
- The subject rental property has been appraised.

- The size of the subject rental property is immaterial and that the landlord's daughter may have roommates.
- The landlord is acting in good faith and wants his daughter to move into the subject rental property so that he can keep an eye on her close by.
- The landlord's family is very orthodox and the landlord wants his daughter within eyesight of her parents.
- The listing for the subject rental property is still up because it cannot be removed without K.S.K's signature until the listing lapses, which will soon occur.

Analysis

Based on the Notice entered into evidence by the tenant and the testimony of both parties, I find that the Notice was served to the tenants on May 25, 2022, in accordance with section 88 of the *Act*.

I find that the Notice complies with the form and content requirements of section 52 of the *Act* because it:

- a) is signed and dated by the landlord,
- b) gives the address of the rental unit,
- c) states the effective date of the notice,
- d) states the grounds for ending the tenancy, and
- e) is in the approved form.

Pursuant to section 68 of the *Act*, I amend the Notice to correctly spell tenant C.G.'s last name. I find that tenant C.G. new or ought to have known the correct spelling of her name. Pursuant to section 68 of the *Act*, I amend the Notice to state tenant G.W. and tenant J.S.'s names. I find that tenants G.W. and J.S. knew or ought to have known that the Notice applied to all tenants and not only tenant C.G. I note that the tenants did not allege at the hearing that they believed only tenant C.G. was being evicted or that they were confused as to who the Notice was seeking to evict.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves or allow a close family member to move into the unit.

Policy Guideline 2 explains the 'good faith' requirement as requiring honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Based on the signed statutory declarations entered into evidence, I find that the landlord has proved, on a balance of probabilities that he purchased K.S.K.'s shares prior to the service of the Notice to enable his daughter to move into the subject rental property and does not have ulterior motives for ending the tenancy.

I accept Counsel's submissions and the statements made in the statutory declarations that the listing of the subject rental property cannot be taken down without the permission of K.S.K. which is not forthcoming.

I note that while the previous owners of the subject rental property and the previous 50% owner (K.S.K.) may have told the tenants of their intention to re-develop the subject rental property, the same cannot be said of the landlord. Based on the landlord's statutory declaration, K.S.K. and the landlord did not agree on what to do with the property which is why it was originally listed for sale. I find on a balance of probabilities, that the landlord did not intend on re-developing the subject rental property.

I find that the landlord is acting in good faith and served the Notice to allow his daughter to move into the subject rental property. Pursuant to section 49(3) of the *Act*, I uphold the Notice and dismiss the tenants' application for dispute resolution. I note that the landlord's daughter is permitted to have roommates and the size and state of repair of the property does not restrict the applicability of section 49(3) of the *Act*.

Section 55 of the *Act* states that 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 I have found that the Notice complies with section 52 of the *Act* and since I have upheld the Notice, pursuant to section 55 of the *Act*, the landlord is entitled to an Order of Possession effective July 31, 2022.

As the tenants were not successful in this application for dispute resolution, the tenants are not entitled to recover the \$100.00 filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on July 31, 2022** which should be served on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 15, 2022

Residential Tenancy Branch