



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE BENCHMARK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, CNL, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62;
- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by property manager SC and the property owner, BH. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings however denies receiving any evidence from the tenant. The tenant testified that she uploaded documentary evidence to the Residential Tenancy Branch’s dispute management site and thought that the documents would be available to the landlord on the website. She did not provide a copy of her evidence to the landlord. As the tenant’s evidence was not exchanged with the landlord in accordance with rule 3 of the Residential Tenancy Branch Rules of procedure, the tenant’s documentary evidence was excluded from being referred to in this decision. The tenant’s testimony, the landlord’s testimony and all of the documentary evidence provided by the landlord to the tenant would be referred to in this decision as the tenant acknowledged being served with it.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to satisfy me that she intends, in good faith, to use the property for the stated purpose?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to any of the landlord's specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the admitted documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on June 1, 2020, with rent set at \$1,725.00 per month. A security deposit of \$862.50 was collected and a security deposit was collected at the commencement of the tenancy.

The property manager gave the following testimony. On April 25, 2022, she sent the tenant a 2 Month Notice to End Tenancy for Landlord's Use via registered mail. The tracking number for the mailing is recorded on the cover page of this decision. She further advised that the landlord was considering initially selling the unit but changed her mind as her son required the unit.

A copy of the notice to end tenancy was provided as evidence by the landlord. During the hearing, the landlord acknowledged an error on the document where the address of the rental unit ought to have been printed. The reason for ending the tenancy states the rental unit will be occupied by the landlord or the landlord's close family member. The family member chosen was "*the child of the landlord or the landlord's spouse*".

The owner of the rental unit, BH gave the following testimony. Her 38-year-old son is moving to BC from Alberta. He got a job in BC, and he is currently staying with friends. Her son needs his own place. She testified her son has no other place to go. He needs his own space, and he works from home. It's not convenient to have her son in her house. She fully intends on moving her son into the house. The landlord testified her son has no tenancy agreement anywhere else and her son's job is downtown, and he goes into work 2 days a week. The owner of the rental unit testified that the reason her son wanted to move into this building was because the location is close to one of the sub-offices of his work. Instead of going downtown, her son can go locally to this office.

The owner testified that they compensated the tenant with the equivalent of 1 month's rent by not collecting rent for the month of June 2022. Rent was collected for July and August, a receipt for use and occupancy was provided for August's rent.

In cross examination, the landlord acknowledged she owns another rental unit in the same building, and she also owns other rental units elsewhere. The property manager testified that the occupant of the other unit in the same building as this unit gave notice to end their tenancy at the end of June. That unit was vacated on July 31st and re-rented for August 1st. The reason the other unit wasn't offered to the tenant in this proceeding was because the rent for the other unit was much higher.

The tenant gave the following testimony. She and her partner broke up at the end of 2021. The tenant emailed the landlord on January 2, 2022 to advise she couldn't afford the annual rent increase and may need to give notice. The tenant denies she actually gave the landlord a notice to end tenancy. The landlord then advertised the unit on Craigslist for more than what she was paying. The tenant was unable to secure another rental and asked to stay. The tenant alleges the landlord sent her another 6 month fixed term tenancy agreement which she signed and emailed back to the landlord, however the tenant could not produce a copy of it, testifying that it was "lost". The tenant testified that the new fixed term tenancy agreement allows her to stay until the end of June 2022. The landlord denies having any such signed agreement and that the tenancy became month to month at the end of the tenant's previous fixed term tenancy.

The tenant testified that on March 17th, she received an email from the landlord advising her that the landlord intends on selling the rental unit. She would not be renewing the lease and wanted to give the tenant as much notice as possible. The tenant contacted the Residential Tenancy Branch who advised her that the landlord must serve her with a 2 Month Notice to End Tenancy for Landlord's Use and compensate her with the equivalent of one month's rent.

Analysis

The tenant is deemed to have received the landlord's 2 Month Notice to End Tenancy for Landlord's Use on April 30, 2022, five days after it was sent via registered mail pursuant to sections 88 and 90 of the Act. The tenant filed an application to dispute the notice on April 26, 2022, well within the timeframe required under section 49 of the Act.

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit. The concept of "Good Faith" is examined in Residential Tenancy Branch Policy Guideline PG-2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member. It states at part B:

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. 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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not 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.

As stated above, the onus is on the landlord to demonstrate that her son plans on occupying the rental unit for at least 6 months from when the landlord assumes possession of the rental unit.

First, the landlord testified that after serving the tenant in this matter with a 2 Month Notice to End Tenancy for Landlord's Use, another unit of similar or better quality, in the same building, owned by the landlord, became available. While I accept that the occupant of the other unit gave notice after this tenant had been served with the notice to end tenancy; the actions of the landlord following the vacancy of that unit appears to undermine the landlord's suggestion that she is acting in good faith. The landlord did not provide any meaningful reason as to why her son couldn't occupy the other vacant unit, citing the timing of receiving that other tenant's notice as the sole reason for continuing with evicting this tenant. There was no evidence that once she became aware the other unit was coming available, that she attempted to explore other options to provide that unit for her son or for the tenant. I find the vacancy in the other unit owned by the landlord exemplifies a lack of good faith upon the landlord.

Further, I find the landlord has not fulfilled her onus to establish her son will occupy the unit at the end of the tenancy. It is up to the landlord to provide the evidence to satisfy me her intended use for the unit is genuine. Although the opportunity was there, the landlord didn't call her son to testify or provide a written statement regarding the steps he has taken to move into the unit currently occupied by the tenant. While the landlord vaguely stated her son works "downtown" and "at home" with a "satellite office" in the vicinity of the rental unit; she never provided concrete facts regarding the proximity of the son's workplace to the rental unit. Nor did she supply employment agreements that show her son was required to regularly attend the workplace or any documentary evidence whatsoever that corroborates any of her testimony. Lastly, without being advised of the proximity of this rental unit to the son's workplace, I have inadequate evidence to determine whether the unit in this building is closer to the son's work, or whether another unit owned by the landlord in a different building would have been more suitable. I find the landlord has provided insufficient evidence to establish her son intends, in good faith, to occupy the rental unit.

Moreover, I have also taken into account the evidence that the landlord had initially intended to sell and had given the tenant an informal notice that she was considering this possibility, and then later decided to allow her son to use the unit. A change of

intention in and of itself is not determinative of the issue but is evidence that I have considered in the context of the evidence as a whole in determining whether the landlord has met their burden in satisfying me that she genuinely intends to allow her son to use the unit.

For the reasons stated above, I find the landlord has not established she intends, in good faith, to have a close family member occupy the rental unit. The landlord's notice to end tenancy for Landlord's Use is cancelled and of no further force or effect.

Finally, in order to be effective, the Two Month Notice must comply with the requirements of section 52, in form and content. Section 52(b) specifically requires the address of the rental unit to be listed on the Notice. The rental unit address is incorrect on the notice, as the landlord's contact information was erroneously printed in that spot. I find the landlord's notice to end tenancy does not comply with the form and content provisions as set out in section 52 and the notice is not upheld.

As the tenant was successful in her application, she is entitled to reimbursement of her filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

In her application, the tenant sought an order that the landlord comply with the *Act*, regulations or tenancy agreement. It appears the tenant seeks to be compensated with the equivalent of one month's rent for being served with a 2 Month Notice to End Tenancy for Landlord's Use. Section 51(1) of the *Act* states: A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord testified that she compensated the tenant by not collecting rent for the month of June, 2022. I find the requirement to compensate the tenant under section 51(1) has been satisfied and I dismiss this portion of the tenant's application.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may reduce a single payment of rent owing to the landlord by \$100.00.

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: August 29, 2022

Residential Tenancy Branch