



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

This hearing dealt with the tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") and authorization to suspend or set conditions on the landlord's restricted right to enter the rental unit.

Both parties appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the parties had served and received the other parties' hearing materials with the exception of one document the tenant had someone deliver to the landlord's front gate. The landlords denied receiving this one document. The tenant described the document as being a description of the landlord's current residence and property. Since I was uncertain as to whether the landlords had received this document but considering they would be able to describe their own residence, I informed the parties that the tenant may read from the document and the landlords may respond to the description of their residence and property.

The tenant confirmed that she continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 2 Month Notice and I severed the other remedy requested by the tenant pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the 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.

The tenant's request for authorization to suspend or set conditions on the landlord's restricted right to end the rental unit is dismissed with leave to reapply.

It should be noted that during the hearing I had to caution the tenant to refrain from inserting extraneous and inflammatory comments in giving her evidence. It is clear that the tenant has negative views of the landlords but such remarks are not helpful as they do not aid in obtaining information to make my decision. Nor, do they foster a successful tenancy relationship. I also suggested to the tenant that if the tenancy continues, as she seeks, she may be better served in finding a more positive way to interact with the landlords. Of course, the same logic applies to the landlords; however, the landlords did not add extraneous details or inflammatory comments to their submissions for the most part.

Issue(s) to be Decided

Should the 2 Month Notice be upheld or cancelled?

Background and Evidence

The landlord and the tenant entered into a tenancy agreement in early November 2020 although the tenant was already residing in the rental unit under an agreement with a former tenant. The tenant paid a security deposit and rent was initially set at \$1000.00. The rent was increased to its current rate of \$1015.00 this year.

On April 17, 2022 the landlord served the tenant with the 2 Month Notice by posting it on the door of the rental unit. The tenant filed to dispute the 2 Month Notice within the time limit for doing so.

The 2 Month Notice has a stated effective date of June 30, 2022 and indicates the landlord is ending the tenancy for the following reason:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input checked="" type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse

Landlord's reasons for ending tenancy

The landlords testified that there are currently 9 people residing in the landlord's home, including their two sons, their son's wives, and three children of their younger son.

Due to "some circumstances" the landlords and their eldest son, who is 43 years old, decided earlier this year that he will move out of the landlords' home and into the rental unit. The reason given for moving is so that their son may reside with his wife and have their own space away from the family and enjoy more privacy and less noise.

The rental unit is one of four units located in the four-plex owned by the landlords. The landlords described how the residential property where the rental unit is located was their family home back in the 1980's and their son enjoyed living there when he was a child. The landlords and their son chose the subject rental unit in the four-plex because it is a smaller unit and their son and his wife do not require much space. A smaller unit would mean their son would have a lesser rent payment to make than that for a larger unit. Also, the other tenants occupying the other units in the four-plex have children, are students and/or ill; whereas there is only a single tenant occupying the rental unit.

Tenant's position

The tenant testified that when the landlord attended the rental unit for an inspection on April 25, 2022, she asked the landlord why she was receiving a 2 Month Notice. According to the tenant, the landlord told her that they were selling their family home and giving their sons money to purchase their own homes but, in the meantime, they had to find alternative housing for their sons. Subsequent to that conversation, the female landlord told the tenant in a phone conversation that she was busy packing to move. However, the tenant has determined the landlord's family home is not listed for sale and the landlord's reasons for issuing the 2 Month Notice that were put forth at this hearing are contrary to the reason the landlords orally provided to her.

The tenant accepts that it would not be ideal to evict the other tenants living in the other units at the property; however, the tenant submitted that she also has health issues and is on disability currently.

The tenant pointed out the landlords have a 14000 sq ft newer luxury home that is located in a very desirable neighbourhood. According to the tenant, online searches show the landlord's home has 11 bedrooms, 12 bathrooms and three master suites complete with ensuites. In addition, there is another house and a two bedroom suite located on the 1.66 acre property. A previous listing for the house indicates the property is an ideal multi-family home. In contrast, the rental unit is a small unit, located on the lower level of a tenanted four-plex, and in a much less desirable location than the family home at which the landlord's son currently resides.

The tenant is of the view the landlord's issuance of the 2 Month Notice is retaliatory in nature and there is no true intention for the landlord's son to actually reside in the rental unit.

The tenant submits that the landlord's retaliation started when she asked for repairs and when they were not performed the tenant filed an Application for Dispute Resolution. Also, the tenant had to call the police on the landlords in July 2021 due to the aggressive manner the landlord was acting toward the tenant at the residential property. Initially, the landlords retaliated by serving her with three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities; a One Month Notice to End Tenancy for Cause; and a written demands that have restricted her access to services and facilities. At the previous dispute resolution proceeding, the Arbitrator cancelled all of the Notices to End Tenancy served by the landlord (file numbers provided on cover page of this decision). After those Notices were cancelled by the Arbitrator in late January 2022, the landlords served her with the subject 2 Month Notice.

Landlord's response

The landlords acknowledged they reside in a large home but point out that the house has only one kitchen and that is not conducive to the privacy, quiet and avoiding conflict their son is seeking.

As for the other house on the property, the landlord testified that it is occupied by their friend and that it is not legally a living accommodation and is supposed to be used as an "agricultural building". Also, while the 2 bedroom suite has its own kitchen, their son

and his wife would not have the privacy he wants to have friends and other family members visit.

The landlords deny they are acting in a retaliatory manner toward the tenant and that their true intention is to help their son.

As for the previous eviction notices given to the tenant, the landlord testified that the tenant was late paying rent many months and the tenant stopped paying for electricity so they had a basis for serving the tenant with 10 Day Notices. The landlord stated the 10 Day notices were not cancelled at the previous Arbitrator but nullified by the tenant paying the rent. As for the One Month Notice previously issued, the landlord submitted they had grounds for issuance of that notice; however, it was cancelled by the Arbitrator presiding over the previous hearing because the female landlord did not effectively communicate the landlords' position during that hearing. As such, the landlord maintains that the previous eviction notices are irrelevant to issuance of the 2 Month Notice and the 2 Month Notice was not issued in retaliation.

With respect to the police attending the residential property in July 2021, the landlords describe the tenant as disturbing them as they were trying to perform repairs at the property. The male landlord did get angry and told the tenant to stop harassing them. The landlord came back to the residential property the following day and the tenant called the police and made up a story about the landlords.

As for the tenant's health issues, the landlords were unaware of her health issues when they issued the 2 Month Notice and only learned of them when they received the tenant's hearing materials. The landlords claim they are motivated to help their son as they believe if they don't, he will suffer health consequences. Similarly, the landlords believe the tenant should enlist the help of her family.

Tenant's final submission

The tenant testified that she has always paid rent to the landlord on time except for one occasion. The tenant points to the previous hearing which shows that all three of the 10 Day Notices were for unpaid utilities, and none of them were for unpaid rent. The tenant stated she has rent receipts to demonstrate when she paid rent and that payments were on time, except once. Also, the previous Arbitrator cancelled the One Month Notice because he found the landlord was not credible.

As for the police attendance at the property in July 2021, the tenant submitted that the police spoke with the landlord after viewing a video of his conduct, not a story she made up. The tenant stated the video is included in evidence submitted for the previous dispute resolution proceeding.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and there is sufficient basis for ending the tenancy for the reason indicated on the notice.

The reason for ending the tenancy, as stated on the subject notice to end tenancy, is consistent with section 49(3) of the Act, which provides that a landlord may end a tenancy where:

(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

[My emphasis underlined]

Section 49(1) of the Act defines “close family member” to include the child of the property owner. In this case, I accept the unopposed submissions of the landlords that they have a 43 year old son and I find this person would meet the definition of the landlords’ “close family member”.

Accordingly, it is before me to determine whether the landlords have a good faith intention to end this tenancy so that their son may occupy the rental unit.

Residential Tenancy Branch Policy Guideline 2a provides information and policy statements with respect to ending a tenancy with a 2 Month Notice so that, among other things, a landlord or landlord’s close family member may occupy the rental unit. Under the heading good faith, the policy guideline provides:

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.

C. OCCUPYING THE RENTAL UNIT

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.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

[My emphasis underlined>

The tenant called the landlords' good faith intention into question. Accordingly, I find the landlords have the onus to prove two things: that they truly intend to use the rental unit for the purpose stated (to house their son and his wife); and, they have a good faith intention in ending the tenancy for this purpose without any ulterior motive.

In support of their position that they intend to provide housing to their 43 year old son, the landlords' submitted a type-written letter that is not dated or signed. There is a typed name at the bottom of the letter and presumably that is the name of their eldest son but I am unable to verify the authenticity of the letter. I was not provided a sworn affidavit of the landlords' son. Nor, did the landlords' son did not appear at the hearing to confirm he authored the letter and that he truly intends to occupy the rental unit as his residence once the tenancy is over. The absence of the landlords' son also meant the landlords' son was not subject to examination by me or the tenant. In light of this, I find the undated and unsigned letter, in the absence of other corroborating evidence, to be very weak evidence.

I heard undisputed evidence that the landlord's family home, where their son currently resides, is an extremely large newer luxury home, complete with three master suites including ensuites, located in a desirable neighbourhood. I find it hard to believe that the landlords' middle-aged son would move from the very desirable and large family home to the small lower unit in an older tenanted four-plex in a much less desirable neighbourhood.

Also of consideration is that the landlords have tried ending this tenancy by way of four previous eviction notices in the past year, all of which were cancelled by the Arbitrator presiding over the previous hearing, as stated by the tenant. None of the 10 Day Notices indicate rent was unpaid or late as suggested by the landlord. Rather, all of the 10 Day Notices were for unpaid utilities, as described by the tenant. Accordingly, I find the tenant's submissions concerning previous disputes to be more accurate and credible than the landlords' submissions.

Finally, I consider the altercation involving police attendance at the property to deal with a dispute between the tenant and the landlord is more consistent with a motive to end this tenancy for reasons other than to house their son.

Given all of the above, when considered together, I find it is improbable that the landlords' son truly intends to reside in the rental unit or that the intention for him to do

so is in good faith. Therefore, I grant the tenant's request and I cancel the 2 Month Notice with the effect that this tenancy continues.

Since this tenancy is continuing for the foreseeable future, I strongly suggest the parties find a path forward that is less antagonistic and more harmonious.

As the tenant was successful in having the 2 Month Notice cancelled, I award the tenant recovery of the filing fee from the landlords. The tenant is hereby authorized to deduct \$100.00 from a subsequent month's rent to satisfy this award.

Conclusion

The 2 Month Notice is cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the filing fee she paid for this application and the tenant is authorized to deduct \$100.00 from a subsequent month's rent payment to satisfy this award.

The tenant's request for orders to suspend or set conditions on the landlords' restricted right to enter the rental unit is dismissed with leave to reapply.

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 26, 2022

Residential Tenancy Branch