



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNL, FFT**

Introduction

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

1. 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;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, JL and VY, and the Tenants, MT and JJ, 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.

The Landlord served the Tenants with the Two Month Notice by Canada Post registered mail on April 11, 2022. The Landlord's Agents provided the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenants confirmed receipt of the Landlord's Two Month Notice. I find that the Two Month Notice was deemed served on the Tenants on April 16, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding and evidence package on May 6, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenants provided the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on May 11, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenants with their evidence by Canada Post registered mail on August 6, 2022. The Landlord’s Agents provided the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenants confirmed receipt of the Landlord’s evidence package. I find that the Landlord’s evidence was deemed served on the Tenants on August 11, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s Two Month Notice?
2. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
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.

The Tenants testified that the tenancy began as a fixed term tenancy on July 1, 2015. The fixed term ended on June 30, 2016. In 2018, the Tenants signed a new tenancy agreement for \$1,900.00. Presently, monthly rent is \$2,026.00 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 father or mother of the landlord or the landlord’s spouse will occupy the unit. The effective date on the Two Month Notice was June 30, 2022.

The Landlord's Agents testified that the Landlord's husband's parents are going to move into the rental property. The Landlord uploaded documentation that the Landlord's other house will be demolished.

Presently, the Landlord's husband's parents are renting another house until they can move into the rental unit. The Landlord's Agent uploaded the tenancy agreement showing that the Landlord's husband's parents have a month-to-month tenancy in another house. The tenancy agreement states that the Landlord's address for service is the same house as the house the Landlord's husband's parents are living in. The Landlord's Agent stated that the owner of the house keeps one room on the ground floor for the owner's things, but the owner does not live in the house.

The Tenants' testified that the other house that was set to be demolished is gone. The Tenants questioned why the Landlord did not offer the house next door to the Landlord's husband's parents or to the Tenants. The Landlord owns the house next door as well. Instead, the Landlord has rented it out to another person who, the Tenants stated, did not move in until around May 1, 2022. The Landlord uploaded a tenancy agreement for this tenancy as starting on January 15, 2022. The Landlord's Agent testified that the husband's parents did not get their permanent residency cards until May 14, 2022; hence, the reason they did not rent this unit to them as they were unsure when the permanent residency cards would arrive.

Analysis

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.

The Tenants question whether the Landlord is acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties 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. 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.

The Landlord's Two Month Notice states that the father or mother of the landlord or the landlord's spouse will occupy the unit. The Property Managers who testified at the hearing said the Landlord's husband's parents are residing in a different rental unit until the subject rental unit is vacant for them. The Landlord's service address for that tenancy agreement states the address is the same as the rental unit. If the Landlord's husband's parents had to serve the Landlord, they would be addressing the package to the same house that they live in. The Landlord would not receive it.

The Landlord rented out the property beside the rental unit in January this year; however, the people moving in, did not move in until May 2022. The Tenants questioned why this property was not being used for the parents, or was not offered to them. The Property Managers did not set out any other information that would assist me in determining that the parents have valid plans of occupying the rental unit. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this Two Month Notice claim, it is the Landlord's onus to demonstrate that they plan to occupy the rental unit, or in this case, that their parents plan to occupy the rental unit. I find that the Landlord has not demonstrated to me on a balance of probabilities that this is the case, and I cancel the Landlord's Two Month Notice. This tenancy shall continue until it is 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 Landlord's Two Month Notice dated April 11, 2022 is dismissed and is of no force or effect. The Tenants' application is granted. This tenancy shall continue until it is ended in accordance with the Act.

The Tenants may withhold \$100.00 from next month's rent due to the Landlord 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: September 20, 2022

Residential Tenancy Branch