



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Codes CNL OLC FFT

Introduction

The tenants seek an order cancelling a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") under section 49(8) of the *Residential Tenancy Act* (the "Act") and an order for landlord compliance under section 62 of the Act. In addition, the tenants seek to recover the cost of the filing fee (section 72 of the Act).

Attending the dispute resolution hearing were a tenant, their advocate, the landlord, and the landlord's son. The parties (except the advocate) were affirmed, and no service issues were raised.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. Are the tenants entitled to an order for landlord compliance?
3. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began about ten years ago. Monthly rent is \$850.00, and the tenants paid a security deposit of \$425.00. There is no written tenancy agreement in evidence.

On May 2, 2022 the landlord served the Notice on the tenants. A copy of the Notice was in evidence (indeed, it was the only documentary evidence submitted). The landlord confirmed the information on the Notice, namely, that the tenancy was being ended so that the landlord's son could move into the rental unit. The rental unit is an old property in need of many repairs.

The landlord's son testified that he intends to move him and his one child into the property. He is currently renting and would like to live closer to his mother who lives "just around the corner." Under cross-examination the son testified that he gave his own landlord a notice to end tenancy back in May, June, or July (he could not recall exactly) and that he is renting month-to-month pending the outcome of this dispute. He admitted that he intends to fix a few things up, including the roof, and likely do some interior work. However, he remarked that he has not yet seen the space and cannot definitively say what work will need to be done. Last, he testified that he intends to move into the property—which will become his primary, full-time residence—as soon as possible or "the earlier the better."

The tenant's advocate argued that they believe the Notice was given strictly on the basis that "it is about money." The advocate explained that the landlord approached the tenants back in March 2022 and had a conversation with them about raising the \$850 rent to \$1,200. The tenants, not surprisingly, were not interested in this. The landlord's son later approached the tenants and suggested a raise to \$1,000.00, which the tenants again declined. Shortly after these rent increase proposals were declined, the landlord issued the Notice. In short, the tenants' position is that they do not believe that the landlord's son will be moving into and occupying the rental unit.

In response, the landlord's son explained that they had "just purchased the property" and wanted to undertake some renovations. They thought that perhaps the tenants could help pay for the renovations. The son then made a reference to the "right of first refusal" but did not elaborate. In any event, the son reiterated that it is his intention to move into the rental unit.

Analysis

Where a tenant disputes a notice to end tenancy the onus falls upon the landlord to prove the ground for ending the tenancy.

In this dispute, the landlord issued the Notice under section 49(3) of the Act, which states that

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.

The Notice complies with the form and content requirements set out in section 52 of the Act. In regard to the date on the Notice, I note that the Notice was served on May 2, 2022. As such, pursuant to section 49(2)(a)(i) of the Act, the effective end of tenancy date would have been August 1, 2022, and not July 1, 2022, as stated in the Notice. Section 53 of the Act corrects the date to August 1, 2022.

More important than the incorrect date, however, is the tenants' argument that they do not believe that the son intends in good faith to occupy the rental unit.

"Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires 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 tenancy. And, to reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

In this case, the tenants' position is that the timing of the issuing of the Notice followed two discussions with the landlord and then her son in which they proposed to increase the rent to either \$1,200 or \$1,000, suggests that the ulterior motive for giving the Notice relates to money. In other words, though this was not explicitly argued, the landlord intends to rent it out for a higher rent and, as explicitly argued, that the son has no intention of moving into the rental unit.

What is telling in this case, and ultimately persuades me to accept the tenants' argument, is that the son testified under oath that they did, in fact, ask for more rent. They explained that they hoped that the tenants would help pay for the renovations. He also briefly referenced a right of first refusal, which may relate to a situation where a landlord issues a *Four Month Notice to End Tenancy for Renovations*. Further, I find it odd that the landlord's son (along with his child) intends to move into a property without having at least viewed the property.

In short, I am not persuaded that the landlord's son intends in good faith to occupy the rental unit.

Taking into careful consideration all of the *viva voce* evidence before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not proven the good faith requirement in issuing the Notice. As such, it is hereby my order that the Notice be cancelled effective immediately. The Notice is thus of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

Regarding the tenants' application for an order for landlord compliance under section 62 of the Act, there are only few particulars to consider in this aspect of the claim. What particulars are contained in the tenants' application relate both to the Notice—which has been cancelled—and other issues.

The reference to the date that the Notice was received, and the effective end of tenancy date, is addressed above in the automatic date correction. The second reference to a "3 month notice" is ambiguous, as there is no known notice to end tenancy under the Act where three months is a requirement. Last, the third reference to driveway access being blocked and so forth is, I find, unrelated to the Notice. Given these particulars, I am not persuaded that the tenants are entitled to an order under section 62. This aspect of the tenants' application is therefore dismissed.

As the tenants were successful in cancelling the Notice they are entitled to recover the cost of the application filing fee under section 72 of the Act. The tenants may therefore make a one-time deduction of \$100.00 from their October 2022 or November 2022 rent to compensate them for the cost of the filing fee.

Conclusion

The tenants' application is hereby granted, in part. The Notice served on May 2, 2022 is hereby cancelled effective immediately.

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 24, 2022

Residential Tenancy Branch