



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TUSK VENTURES REAL ESTATE
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant was also assisted by Legal Counsel. The parties, or Legal Counsel were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 17, 2022 was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that his company purchased the small 5-unit rental building in October, 2021. The tenancy began prior to that, on June 1, 2020, and no security deposit or pet damage deposit was collected by the previous owner or the current landlord. Rent in the amount of \$825.00 is payable on the 1st day of each month and there are no rental arrears. The landlord does not currently reside on the property.

The landlord further testified that on August 23, 2022 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit. A copy has been provided by the tenant for this hearing and it is dated August 17, 2022 and contains an effective date of vacancy of October 31, 2022. The reason for issuing it states: The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord will be occupying the rental unit, and is currently a guest in his mother's home. Another unit is not suitable, and the landlord chose this one because of the proximity to sun and there are no trees around it and no one living above it.

The rental building was purchased by a holding company due to tax advice that the landlord received, and the landlord is the sole shareholder.

The landlord is a realtor and had to transition from his home in 2020 when his father passed away and moved in with his mother, and now lives full time in the City. An Affidavit has also been provided for this hearing indicating that the landlord is the sole shareholder. It states that the landlord requires the use of the property for reprieve of his current living situation where he is a guest only, as he fulfills duties as primary caregiver to his elderly mother. The landlord testified that other family members will be taking over those duties to assist the landlord's mother immediately after the landlord moves into the rental unit.

Another unit had become available on the ground floor, which flooded and was in disrepair from previous owners. At that time the landlord had a tenant looking for space and the landlord took out floors and remediated mould. It was a 1 bedroom unit and took 2 ½ months to complete repairs. The landlord rented it for \$1,200.00 per month. The landlord never intended to live below ground. The landlord needs the privacy of this rental unit and a self-contained suite and wants to regain normalcy. It will be the landlord's home and will definitely live there for more than 6 months, perhaps even 6 years.

The landlord is planning to do some repairs or renovations cosmetically only, but is not sure because the landlord has not been inside.

The landlord has read the lawyer's written argument of the tenant, which is an attempt to make up the grounds to cancel the Notice, but has sensationalized the landlord's circumstances and to polarize the landlord to give the tenant priority, and the tenant has not provided any as evidence, but speculation. The landlord has provided a sworn

Affidavit, and the law permits the landlord to occupy the rental unit. The landlord has taken all required steps and assisted the tenant in finding another place to live. The landlord has good faith intentions and cannot be required to continue to live as a guest in his mother's home.

The tenant testified that she moved into the rental unit in 2012, got married and officially took over the suite when she separated from her spouse in 2020. The tenant entered into a written tenancy agreement with the previous owner for a tenancy to commence on June 1, 2020 on a month-to-month basis and still resides in the rental unit with her 4 year old child. A senior neighbour rents a unit across the hall, the suite below is occupied by a couple who have been there for about the same amount of time as the tenant, and across a unit is occupied by the tenant's ex-spouse and a roommate. Only unit #5 has been vacated by tenants.

The tenant has been in other suites, and the sun comes up into the tenant's bedroom in the morning and comes up in the kitchen in other units. The rental unit has 2 bedrooms, a small bathroom with a shower but no bathtub, and small living room and kitchen. The landlord would be able to know more places to live and it would be easier for him to afford lots of options that the tenant doesn't have. The landlord has not been seen around the building and told the tenant at one point that he had no interest in going there monthly. A new tenant had an altercation with someone claiming to be the landlord's girlfriend, who was outside drunk, and when the tenant asked her to leave she told the tenant to "enjoy" the eviction. The tenant was surprised that she knew that and emailed the landlord, who responded that he would get the other side of the story from the other tenant.

The Notice did not provide any information about who was moving in, so a week or so after receiving the Notice the tenant emailed the landlord who said that he would be the one moving in. The landlord has testified that he helped the tenant or put in an effort in helping the tenant find a place, which is not true. When the landlord dropped off the Notice, he included a printed sheet with 4 options to help to find housing, including BC Housing. There was no other assistance from the landlord.

Photographs of the interior and exterior of the rental property have also been provided for this hearing.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

A written Legal Argument has been provided for this hearing, which states that the tenant's dispute is based on 2 grounds:

- the tenant does not believe the landlord intends to occupy the rental unit as defined by Section 49 of the *Residential Tenancy Act*, and
- the tenant believes the notice has been issued in bad faith, with a dishonest motive of the landlord to re-rent for the current market rate, which is significantly higher than the amount the tenant pays.

The written legal argument also states that the landlord's own evidence shows that the landlord intends to use the rental unit as a secondary residence for respite, and that the landlord intends to re-rent the suite after six months of minimal use.

The landlord is a real estate agent who states that he intends to occupy the rental unit, but considering the housing market and the circumstances, Legal Counsel has concerns about why he would take such an interest, given that the landlord's Affidavit states "reprieve" of his current living situation where he is a guest only, as he fulfills duties as primary caregiver to his elderly mother.

SUBMISSIONS OF THE LANDLORD:

There is no ulterior motive or bad faith.

Analysis

Where a tenant disputes any notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to accomplish the stated purpose within a reasonable time after the effective date of the Notice, with no ulterior motive.

I have reviewed all of the evidentiary material and the Written Legal Argument of the tenant's Legal Counsel.

The landlord testified that he doesn't even know what cosmetic repairs or renovations he will do if granted possession because he's never been in the rental unit. I also consider the testimony that the landlord had another 1 bedroom unit renovated and rented for \$1,200.00 per month, and that the tenant rents this 2-bedroom apartment for \$825.00 per month. The tenant's concern is that the landlord is a realtor and will reside in the rental, perhaps full-time, or part-time while assisting his mother, for 6 months while completing cosmetic upgrades and then re-rent for higher rent. I share that concern. The landlord is a

real estate agent who no doubt purchased the property as a profit making business about a year ago.

While the *Act* allows a landlord to end a tenancy for the landlord's use of the property, it also sets out punitive damages for the landlord's failure to accomplish the stated goal, but that is not the be-all and end-all. The landlord must demonstrate good faith, not just intent to use the rental unit for 6 months to avoid the punitive damages, but to have no ulterior motive.

In this case, having reviewed the photographs provided by the tenant showing an old building, I do not believe the landlord, who has access to multiple listings and availabilities, has the intent to live in the rental unit without an ulterior motive. I am satisfied in the circumstances and the evidence before me that the landlord has an ulterior motive, which is to make repairs or renovations, reside on the property full-time or part-time for 6 months to avoid punitive damages, and re-rent the rental unit for the market rent. Therefore, I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property and the tenancy continues.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 17, 2022 is hereby cancelled and the tenancy continues.

This order is final and binding.

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: October 24, 2022

Residential Tenancy Branch