



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On June 9, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and the Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord did not dispute that she received the Notice of Hearing package from the Tenants in July 2022, and she did not raise any other concerns with service. As well, she confirmed that she did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that complies with the Act.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy originally started sometime around August 1, 2005; however, the Tenants believed it started on or around September 5, 2009. Regardless, all parties agreed that rent was currently established at \$1,000.00 per month and was due on the first day of each month. A security deposit of \$450.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration.

The Landlord then advised that the Notice was served to the Tenants by hand on May 31, 2022, and the Tenants indicated on their Application that they received it that day. The reason the Landlord served the Notice is because "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)." As well, the Landlord indicated that it would be "The landlord or the landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted as July 31, 2022, on the Notice.

She testified that she lives in Nova Scotia and that she wanted to move into the rental unit to be closer to her family because she has been away for a substantial amount of time. She cited the difference in weather on the east coast and the fact that her and her partner have health issues as additional reasons to move back west. She stated that she first contacted the Tenants on March 30, 2022, to give them the heads up that she would be selling the rental unit. However, her son advised her against selling the property, so she decided to keep it. She then informed the Tenants prior to serving the Notice that she intended to move in instead. She stated that she would keep her property in Nova Scotia to use as a vacation home.

She submitted that she “lives simply” and as she had made the cross-country move before, she did not anticipate much difficulty, nor did she make any efforts to plan to move either prior to or after service of the Notice. Although, she stated that her sister had volunteered to gift her a plane ticket home.

Tenant B.F. advised that the Landlord called them in March 2022 and told Tenant G.F. that they should find a new home to live as her niece was having difficulties and would possibly need to live in the rental unit. He testified that the Landlord also stated to her in March 2022 that she might want to sell the rental unit. He submitted that he contacted the Landlord in March 2022 and offered to purchase the rental unit; however, the Landlord responded in May 2022 and was asking too much for the property. As well, he noted that the Landlord stated that her niece may be interested in purchasing the rental unit. In addition, he claimed that the Landlord informed him in March 2022 that she loved living in Nova Scotia and that she had no plans to move anywhere else.

G.F. advised that they were shocked when they received the Notice. As well, she testified that the Landlord’s sister, who served the Notice, informed them that the Landlord’s family were attempting to convince the Landlord to move west, but it was the Landlord that had no intention of moving.

The Landlord confirmed that her niece attempted to purchase the rental unit, but could not, and then subsequently bought a property elsewhere.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord’s reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

“The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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.”

When reviewing the totality of the evidence and testimony before me, while I have testimony from the Landlord about her desire to move into the rental unit, I note that she has provided no documentary evidence to support these submissions. Given that she would be making a cross-country move, I find it reasonable to conclude that this would have required a substantial amount of planning and/or booking of flights or moving companies, or any other logistical tasks associated with such a move. Furthermore, I find it reasonable to conclude that in planning such a substantial journey, at least some efforts to coordinate and execute these plans would have likely been started prior to service of the Notice.

Apart from her sister offering a flight, which was not booked, there is no documentary evidence that has been submitted to even remotely support a conclusion that, prior to service of the Notice, the Landlord intended to move into the rental unit. Moreover, there is no documentary evidence that would demonstrate that she made any efforts to do so in a timeframe that coincided with the effective date of the Notice.

I acknowledge that once the Landlord received the Notice of Hearing package, she simply then waited for the outcome of this hearing; however, the Landlord still had the opportunity to submit any documentary evidence to support her intention, prior to service of the Notice, that she would be moving into the rental unit.

As the burden is on the Landlord to prove why the Notice was served, I am not satisfied by the Landlord's testimony that this Notice was served in good faith. The Tenants have provided their own testimony that, in the months prior to service of the Notice, the Landlord attempted to sell the rental unit and/or possibly require it for the use of her niece, which the Landlord has not denied. There is simply too much conflicting testimony about the Landlord's actions and intentions prior to service of the Notice to be persuaded by the Landlord's testimony solely.

Based on my assessment of the evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord served this Notice in good faith. As such, I find that the Notice of May 31, 2022 is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of May 31, 2022 to be cancelled and of no force or effect.

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 25, 2022

Residential Tenancy Branch