



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice or 2 Month Notice) issued by the landlords, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the cost of the filing fee.

The tenant and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlords confirmed receipt of the tenants' evidence on June 15, 2022.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states 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.

In this case, I find the primary issue to be decided is consideration of the 2 Month Notice, as this determines whether the tenancy ends or continues. I find the tenants' request for an order requiring the landlord to comply is not related to the primary issue. I will, therefore, only consider the tenants' request to cancel the 2 Month Notice and to recover the cost of the filing fee. The balance of the tenants' application is **dismissed**, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Additionally, the landlord filed evidence which was received by the RTB on October 22, 2022, 1 clear day prior to the hearing. The tenant denied receiving the landlords' evidence. I decline to review or consider the landlords' evidence due to the landlords' failure to comply with the evidence deadlines outlined in the Rules. Instruction for submissions of evidence is provided in the hearing package. Therefore, only the landlords' oral evidence was considered in this matter.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Are the tenants entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on or about September 1, 2020, monthly rent is \$2,500 payable on the first day of the month and the tenants paid a security deposit of \$1,250. Filed in evidence was the written tenancy agreement.

The evidence shows that the landlords issued the tenants two separate 2 Month Notices. The first Notice was dated April 25, 2022, and was on an out-of-date RTB form. The landlords then served the tenants a second 2 Month Notice on the current RTB form. That second Notice was dated "06-Oct-2022", and had an effective move-out date of August 15, 2022. The Notice showed that it was digitally signed by the

landlord on June 11, 2022. The tenants submitted in their application that they received the 2 Month Notice on June 6, 2022, by registered mail.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or landlord's spouse. The landlords presently live in the USA.

Pursuant to section 7.18 of the Rules, the landlords proceeded first in the hearing to give evidence to support the Notice.

The landlord testified he works from home, presently in the USA, and desires to move to the rental unit to transition to retirement. The landlord said that he may work another 1-2 years and then retire, as he was financially advised it would be better to transition to retired life prior to moving. The landlord submitted they purchased the rental unit to live in upon retirement and were excited to be able to move there.

The landlord submitted that he is not a US citizen and works in the US only on a green card. The landlord submitted that his wife, the co-landlord, is now retired. The landlord said that he can work from home anywhere in North America and so he can still work while living in the rental unit.

The landlord confirmed that they own a 5-bedroom home in the USA, and that their son plans on moving into the home after they re-locate and to take-up the mortgage.

Tenant's response –

The tenant questioned the landlords' good faith. In evidence, the tenants filed a series of text messages between the landlord and the tenants. Beginning on July 19, 2021, the landlord sent the tenants a text message stating that the costs of owning the rental unit have increased substantially and that the landlords had no option other than to increase the tenants' monthly rent or sell the rental unit.

On July 25, 2021, the landlord sent other text messages to the tenants again suggesting that their rent was too low and had to be increased.

On August 5, 2021, the landlord sent the tenants a text message suggesting that they should rent out the dining room of their rental unit to a third party of their choosing for \$900, payable to the landlords, and the landlords could then decrease the tenants' monthly rent by \$200.

On August 6, 2021, the landlord's next text message informed the tenants that if they cooperated in helping with the sale of the rental unit and pay an increase of \$100, they could continue to reside in the rental unit. The landlord also indicated they were busy and not ready to sell at that point.

The tenants said that they saw the rental unit on a rental listing site, showing the rental unit was currently for rent for an increased monthly rent. Filed in evidence was a copy of the listing.

The landlords responded and said that the listing was an old advertisement from 2018 and that the rental unit is not currently listed. The landlord said that the listing was archived and said the URL in the listing would show that was the case.

The landlord submitted that they rented to the tenants at a time when rent prices were quite low due to the effects of the pandemic at that time.

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. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or spouse intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, landlord and spouse in this case, *"intend in good faith to use the rental unit as a living accommodation or as part of their living space"*.

PG 2A further provides that 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 their obligations under the Act.

PG 2A addresses good faith as follows:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) 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: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636. 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 and MHPTA or the tenancy agreement.

...

If there are comparable 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.

In considering the totality of the evidence, I am not satisfied that the landlords truly intend to use the premises for the stated purpose or that the landlords do not have an ulterior motive for ending the tenancy. I make these finding based on the following.

The evidence is that 9-10 months prior to issuing the first 2 Month Notice, the landlord attempted to negotiate a substantial rent increase with the tenants due to their increased costs, at a time when there was a moratorium on rent increases, or proposing to sell the rental unit due to the costs, or proposing that the tenants could rent out a portion of their rental unit, the dining room, to a third party, who paid rent to the landlords. The landlord indicated in the text message that at that time, they were too busy to sell the rental unit.

I find the landlord's testimony that they purchased the rental unit to live in upon retirement and were excited to live there is contradictory to their text messages sent to the tenants. It was clear upon reading the text message evidence that the landlords were unhappy with the monthly rent being paid by the tenants and if the tenants did not

agree to voluntarily increase the monthly rent or rent out part of their home to a 3rd party who would pay additional rent to the landlords, the landlords would sell the rental unit.

I also find the landlords submitted insufficient evidence that their son intended on moving into their home in the USA, which would allow them to move to the rental unit. The son was not present at the hearing to provide direct testimony, nor were there documents supporting this assertion.

These text messages lead me to conclude the landlords did not issue the 2 Month Notice in good faith and had an ulterior motive when doing so, which was to significantly increase the monthly rent over and above what the tenants are currently paying.

Given the evidence before me and taken in totality, I find that the landlords submitted insufficient evidence to prove on a balance of probabilities that the landlords intended on living in the rental unit for residential purposes for 6 months following the effective date. I also find that the 2 Month Notice was not issued in good faith, but rather I find the landlords had an ulterior motive.

Therefore, I find the tenants' application is successful, and as result, I **ORDER** the 2 Month Notice of "06-Oct-2022", for an effective move-out date of August 15, 2022, is cancelled and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

I grant the tenants recovery of their filing fee of \$100. I authorize the tenants a one-time rent reduction of \$100 from a future monthly rent payment in full satisfaction.

I note that I have not considered the tenants' evidence of the rental unit currently being listed for rent. This website in particular mines current and previous listings from other sites and I do not find it substantiates that the rental unit is currently listed for rent. However, I made my findings based on the other evidence referenced above.

Further order –

I find it necessary to address the first 2 Month Notice, dated April 25, 2022, issued by the landlords to the tenants as the Notice was filed in this application for dispute. This Notice was not on the proper form, and for that reason, I find that 2 Month Notice does

not comply with the requirements of the Act as to form and content. I order that the 2 Month Notice dated April 25, 2022 is cancelled.

Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notices cancelled and they are of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The tenants are granted a 1-time rent reduction of \$100 to recover the cost of the 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 *Residential Tenancy Act*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 26, 2022

Residential Tenancy Branch