



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;

The tenant attended with the advocate HG ("the tenant"). The landlords attended ("the landlord"). No issues of service were raised. The hearing process was explained.

The landlord submitted no documentary evidence.

Each party confirmed the email address to which this Decision shall be sent.

I informed the parties that no recording of the arbitration was permitted. Each party stated they were not recording the hearing.

Preliminary issues are addressed.

Preliminary Issue - Burden of Proof

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Residential Tenancy Branch Rules of Procedure - Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

Issue(s) to be Decided

Are the tenants entitled to the relief requested?

Background and Evidence

Application

This is an application by the tenant to cancel a Two Month Notice issued by the landlord. The tenant asserted the Notice is not issued in good faith and is issued in response to the tenant's requests for repairs. The landlord denied the claim and requested an Order of Possession.

Background

The parties agreed the unit is in a building owned by the landlord. The unit has 5 bedrooms and several baths. There are other accommodations in the building which the landlord rents primarily on Air B&B.

The parties agreed on the background of the tenancy. A copy of the tenancy agreement was submitted. Included in the rent are electricity, heat, appliances, and laundry.

INFORMATION	DETAILS
Type of tenancy	monthly
Beginning Date	August 1, 2015
Vacancy Date	ongoing
Rent payable on first of month	\$2,565.00

Security deposit	\$1,100.00
Pet deposit	0
Arrears of Rent	0

Two Month Notice

The parties agreed the landlord issued a Two Month Notice in the RTB form, a copy of which was submitted as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	June 26, 2022
Effective Date of Notice	August 31, 2022
Date and Method of Service	personal
Effective Date of Service	June 26, 2022
Reasons for Issuance	<p>Following checked in Two Month Notice:</p> <ul style="list-style-type: none"> • Will be occupied by the child of the landlord or landlord's spouse; • The father or mother of the landlord or landlord's spouse
Application for Dispute Resolution filed - date	June 27, 2022 – filed within time

Landlord's Testimony

The landlord testified as follows. Their adult daughter is living at home, and they want her to have independence as well as a home of her own. As well, their mother intends to move to the unit from outside the country soon, although the date is not certain. Accordingly, they request the tenant vacate the unit so their daughter and mother can move in.

The landlord's mother lives outside Canada. Although her arrival in Canada has not been scheduled, they intend that she move into the unit shortly after it becomes vacant.

The landlord fulfilled his duties to repair and maintain the unit. Problems with the provision of heat to the unit and repairs to laundry have occurred in the past with the tenant. However, these incidents were of short duration and the heat was fixed as soon as possible, within a few days.

The landlord acknowledged they informed the tenant they would not pay the recent repair bill for the dryer. However, they had subsequently paid the invoice.

The landlord testified the issue of repairs had nothing to do with the issuance of the Notice.

The landlord denied that they intend to use the unit to generate more revenue, particularly by short term rentals.

Tenant's Testimony

The tenant testified as follows. Their family unit consists of 5 adults who have been renting the unit for 7 years.

The parties have an increasingly acrimonious relationship over the issue of an increasing requirement for repairs to the unit. The landlord failed or refused to do the work the tenant believed was necessary.

The tenant testified to repeated ignored requests to the landlord. These requests included turning on the heat in cold winter months, raising the temperature of the water, and repairing the laundry appliances.

The tenant testified that in the last two winters, the landlord has turned off the heat and lowered the temperature of the hot water for several months at a time. The tenant testified the unit is currently unheated.

As the landlord is required to provide and pay for heat and hot water to the unit, the tenant believed this was done to save money.

The tenant submitted a signed letter from the landlord's nephew, SL, whose full name appears on the first page. The letter states:

This is to confirm that I lived in one of his suites, while it was in renovation phase. It's now been converted to an abnb and during my stay I came to know the above family really well, esp the father [name of landlord].

It saddens me to say whilst I was renting the heat wasn't working for approx forty plus days! This was in Nov 2021 during severe cold weather and despite our complaints as to when heat will be fixed, the owner's chose not to respond to all tenant's phone and text messages! I esp felt sorry for main floor occupants given large space and high ceilings. In particular [the tenants] who are senior citizens and have health issues!

[The landlord] was coercing extra rent from me, equivalent to hotel and abnb rates! He neglected repairs ; snow piles in a three car steep driveway etc and his only concern was revenue came in from four rental suites!!

I was pressured to vacate suite at a day's notice, [the landlord] further confided that they will evict the [tenant] Family, convert entire place into abnb rental and I was not to let them know of his intentions!!

The above family and other tenant's told me the heat was off for a similar period in 2020 and in extreme winter weather. Owner's told me they had a vendetta with main renter ([tenant]) as she was abrupt and not compliant to they shady business dealings. I definitely did not see her or any other family members having any such behaviors The father [tenant] always kept the big yard clean; shovelled snow; did extras ie pressure washing patios; sidewalk and the large driveway. I was told he only got \$100 a month for doing so much going seven year's! He sustained injuries in doing the owner's work and never got compensated fully as such.

[The landlords] have a history of doing above and much more to all tenant's and as such I had to vacate their residence.

I will gladly answer any questions the RTB may have with respect to the above matter.

The tenant testified that neighbours loaned them heaters when the heat was not working. In support of this testimony, the tenant submitted a copy of a signed letter from MM and LD which stated:

We reside at [address] and have known [tenant] and his family since 2018, as our neighbours.

In November of 2020 and 2021 we gave two oscillating heaters to the family, as their home was without heat for over forty days each time.

The tenant submitted a copy of an exchange of texts between the parties dated May 28, 2022 in which the landlord informed the tenant that they would have to pay for the cost of a repair to the laundry appliances. The tenant testified the bill has not been paid to date.

The unit currently needs considerable repairs in support of which the tenant submitted many photographs. The tenant testified that the had “broken and rotting” deck/stairs, shattered glass in the skylight and a leaking roof. They testified their repeated requests for repairs have been ignored.

In summary, the tenant asserted the Notice was not issued in good faith for two primary reasons.

Firstly, the tenant has made numerous complaints about heat and other issues which has been troublesome to the landlord. Compliance with the requests would result in unwelcome expenses.

Secondly, market rent was significantly more than the current rental for the unit and the landlord may intend to rent the unit for more money possibly as a short term rental in keeping with the rental of other accommodation in the building. The building contains other accommodation suitable for the landlord’s plans.

Landlord’s Reply

The landlord denied the tenant’s version of events or description of their motive. The landlord testified they merely want their daughter and mother to live in the unit. This was the sole purpose for the issuance of the Notice.

The landlord denied seeking revenge or retaliation as claimed by the tenant. They objected to the tenant's statements that they were slow to do repairs or refused to do them.

While they acknowledged the author of the letter (SL) is their nephew and briefly lived in one of the suites in the building, the landlord denied SL's claims they did not provide adequate heat to the building.

The landlord denied knowledge that the unit currently does not have heat.

The landlord acknowledged the above exchange of texts about the dryer but testified they had subsequently paid the repair bill.

The landlord denied they intend to rent the unit for more income.

Summary

The tenant requested the Notice be cancelled as the landlord did not issue it in "good faith".

The landlord requested an Order of Possession.

Analysis

While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The Act and Guidelines

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the hearing.

The tenant raised the issue of the intention of the landlord in issuing the Notice. The tenant questioned whether the landlord's plan for his daughter and mother to occupy the unit was genuine. The tenant expressed a lack of confidence in the landlord's stated

plan. The tenant argued the landlord issued the notice in retaliation for the tenant's repair requests, especially to provide heat and fix the dryer.

The tenant asserted that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a valued tenant, and now estranged. The motive, the tenant asserted, is retaliation and fear of requests for costly repairs. The tenant also opined that the landlord could rent the unit for substantially more rent than paid by the tenant. As well, the landlord could have chosen the other accommodations in the building for their daughter and mother which are rented short term.

The Residential Tenancy Branch Policy Guideline # 2 states *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 Two Month Notice.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.

When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy.

The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Credibility

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the tenant's testimony is in harmony with that of the previous occupant SL and neighbours both of whom submitted letters. As well, the tenant submitted many photographs in support of their claim the unit needed substantial repairs. I find the tenant provided credible testimony in all aspects.

The landlord's denial, unsupported by any witness or documentary evidence, provides a different version. I find their testimony does not have a ring of truth. I conclude the landlord's testimony is not reliable or credible. Where the parties' evidence differs, I give greater weight to the tenant's version of events

Findings

The tenant has raised the good faith intention of the landlord which I find has some basis.

While the landlord denied they hold any resentment or ulterior motive, I accept the tenant's testimony that the parties acrimoniously argued over the condition of the unit and the provision of heat. I accept the tenant's testimony that the unit was not heated in compliance with the agreement for several months during the last two winters. I also

accept the tenant's testimony that they requested the landlord repair the dryer which the landlord denied in May 2022 and shortly afterwards served the Notice.

I have carefully considered the evidence. I find that there was a conflict between the parties as the tenant increasingly demanded repairs and heat.

I find that the timing of the Two Month Notice so quickly after the disagreement regarding the repair to the dryer and the escalation of serious heating and other issues, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

I find there are reasonable doubts about the intention of the landlord to have their daughter and mother occupy the unit at the end this tenancy. The landlord submitted no documentary evidence in support of their claim. I find the landlord has not met the burden of proof that they intend to do what they said in the Notice.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, I find that the good faith argument has merit.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to the *Act*.

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 18, 2022

Residential Tenancy Branch