



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twin Valley Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49
- recovery of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by AP and CP. The tenant, DB, appeared for himself.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) with an effective date of August 31, 2022, and the landlord’s materials in response to the dispute notice. The landlord confirmed receipt of the dispute notice and the tenant’s evidence package. Service for both parties complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the Two Month Notice to End Tenancy for Landlord’s Use of Property valid and enforceable against the tenant?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The most recent tenancy agreement between the parties was effective August 1, 2015. Rent is \$765.00 per month and the landlord still holds a \$350.00 security deposit in trust. The tenant still occupies the residence.

The landlord's agent AP stated that the landlord is a family corporation, and he and his wife CP are the sole directors and voting shareholders. The landlord owns all of the units in the building where the subject rental unit is located. They have a 19 year old son who wishes to move out of the family home and the tenant's unit was identified as the best unit as it is the least desirable unit in the building for rental purposes and is therefore more affordable to the son. The building is close to the son's work and close to downtown if the son chooses to access downtown amenities. They provided a statutory declaration signed by the son attesting to his desire to occupy the rental unit. They also provided his driver's license, proof of the son's employment and the location of his workplace in relation to the rental unit.

The tenant stated that the landlords have made previous attempts to get him to vacate the rental unit by offering him other units at a higher rent. He stated the landlords were aggressively attempting to get him to move, and he believed the initial reason for ending the tenancy was that the landlord wished to renovate the unit and then rent it out for a higher rent. He provided a recording of a conversation between himself and CP on June 3, 2022 as evidence of the landlord pressuring him to move to another unit.

The landlords denied that the reason for ending the tenancy was for the purposes of renovations. They stated that the wiring in the building needs to be replaced and has been replaced in all of the units but the tenant's unit. They had initially told the tenant about the need to replace the wiring because their insurance company was not going to provide insurance unless the building was re-wired, but they did find another insurance company that would insure them with the original wiring in the tenant's unit. If they replaced the wiring in the tenant's unit the tenant would have had to vacate the unit for a period of time but the landlord would not have ended the tenancy. The landlord confirmed that they still wished to replace the wiring, but the reason for the Two Month Notice was to allow the son to occupy the unit.

The landlord confirmed that they had offered the tenant other rental units, but that was based on his indication to them at some point that he wished to move. The tenant stated that any expressed desire to the landlord of a wish to move should not have been taken as an immediate desire to move, but instead was merely future speculation on the part of the tenant.

Analysis

Section 49 of the Act permits a landlord to issue a Two Month notice to end a tenancy if the unit is required for a close family member who intends in good faith to occupy the unit. The notice was provided in evidence and meets the form and content requirements under section 52 of the Act.

Rules of Procedure 6.6 states, “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. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord had the burden of proving the validity of the Two Month Notice served on the tenant.

The tenant raised the issue of whether the landlord had a good faith intention to allow the son to occupy the unit, and based on conversations with the landlord, believed that the landlord wished to evict him for renovations. RTB Policy Guideline 2A provides some guidance on the meaning of faith:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. 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 (section 32(1)).

I have considered the statutory declaration of the landlord’s son as well as the oral evidence of the parties and I find that the reason for the Two Month Notice is that the

landlord intends in good faith to have the son occupy the rental unit. The fact that they also wish to replace the wiring is ancillary to the primary purpose for the Two Month Notice.

I also reviewed the June 3, 2022 recording of a conversation between CP and the tenant. While she does offer another unit to the tenant, I don't find that the conversation shows that the landlord is placing undue pressure on the tenant to move, and instead could be interpreted as the landlord attempting to facilitate what they believe is a desire of the tenant to move. Both parties agreed that the tenant had commented about moving at some point, and while the landlord may have misinterpreted the tenant's intention, I don't find that the offers of a different rental unit are evidence of bad faith or ulterior motive on the part of the landlord.

I also note that the landlord stated in the hearing that he is aware of the difficulty in obtaining housing in the area, and that it is winter which may make it tougher for the tenant to quickly secure suitable accommodations. They indicated in the hearing that they would be prepared to allow the tenant to remain in the unit for a few months prior to the order of possession taking effect.

I find that the tenant was unsuccessful in their application to cancel the Two Month Notice and I find the landlord's notice is valid.

Conclusion

The landlord is granted an order of possession which will be effective on December 31, 2022 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia. The tenant was unsuccessful in his application and therefore is not entitled to recovery of the \$100.00 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*.

Dated: November 09, 2022

Residential Tenancy Branch