



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 21, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 07, 2022 (the “Notice”)
- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing with D.P., who also lives in the rental unit. The Landlords appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the request for compensation because it is not sufficiently related to the dispute of the Notice. The request for compensation is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started May 15, 2020. Rent at the start was \$1,200.00 due on the first day of each month. The Tenant paid a \$600.00 security deposit.

The Notice was submitted. The effective date of the Notice is June 07, 2022. The grounds for the Notice are:

The rental unit will be occupied by the Landlord or the Landlord's spouse.

The Landlords testified that all pages of the Notice were served on the Tenant in person June 07, 2022. Landlord J. testified that they served the Notice. Landlord J.C. testified that they know Landlord J. served all four pages of the Notice on the Tenant because Landlord J.C. and Landlord J. completed the Notice together and Landlord J.C. saw Landlord J. take the Notice to the Tenant.

The Tenant agreed they received the Notice June 07, 2022, in person; however, the Tenant testified that only the first two pages of the Notice were served on them. The Tenant testified that Landlord J. had them sign a receipt of service acknowledgement and that they did sign this. I asked the Tenant why they signed the receipt of service acknowledgement if they did not receive the complete Notice and the Tenant said they didn't really look at the Notice until later when they noticed pages were missing. The only evidence the Tenant pointed to in support of their position was the copy of the Notice submitted which the Tenant suggested shows that only two pages were served.

The Landlords testified that the Notice was issued because they want to use the rental unit for their own use and want the unit back for themselves. The Landlords confirmed the rental unit is in their house which has an upper portion and lower suite. The Landlords live in the upper portion of the house.

The Tenant disputed that the Landlords intend to use the rental unit for their own purposes. The Tenant took the position that the Landlords issued the Notice because the parties had a disagreement about payment of a utility bill. The Tenant submitted that the Landlords never gave them an indication that they wanted the rental unit back for their own use until the issue with the water bill arose between the parties.

In reply, Landlord J. testified that they simply went down to talk to the Tenant about a water bill and there was no further issue with this. Landlord J. thought this occurred in September or October, after the Notice was issued. Landlord J.C. testified that the issue with the water bill occurred in June or July but that there was no negative context surrounding the discussion about the water bill.

The Landlords provided written submissions which outline the history of the tenancy. It seems clear from the outline that the Landlords decided to take back the rental unit for their own use because of issues they had with the Tenant and D.P.

I have reviewed the documentary evidence provided which is mainly evidence authored by the parties or evidence relevant to the compensation request which has been dismissed.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

RTB Policy Guideline 2A addresses ending a tenancy for landlord's use and states:

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)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant 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.

C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space...

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months. (See for example: *Blouin v. Stamp*, 2021 BCSC 411)

I accept that four pages of the Notice were served on the Tenant because both Landlord J. and J.C. testified to this, and the Tenant signed a document acknowledging service. I do not accept that the Tenant would sign a document acknowledging service without ensuring they received all four pages of the Notice, which are clearly marked at the bottom of the Notice. I do not agree with the Tenant that one can tell from what they submitted that they were only served two pages of the Notice. I find the Tenant received the complete Notice June 07, 2022.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. I find the Tenant disputed the Notice in time.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am satisfied based on the testimony of the Landlords and their written statement that they intend to use the rental unit for their own purposes as part of their living space. I accept this because I did not have concerns about the reliability or credibility of the Landlords. I acknowledge that the Tenant disputed the Landlords' intention; however, I place more weight on the Landlords' testimony because they are the ones who know their own intention. Further, the Tenant has not provided any compelling reason or evidence to call into question the Landlords' testimony about their intention. I

acknowledge that the Landlords have the onus to prove their intention and I find they have done so through their testimony and written submissions. I simply note that the Tenant has not provided testimony or evidence that makes me question the testimony of the Landlords.

I do acknowledge that the Landlords clearly came to their decision to take back the rental unit for their own use in part due to issues they had with the Tenant. I find the Landlords' written materials show this. However, I do not find that this is an ulterior motive as that term is used in RTB Policy Guideline 2A because I accept that the Landlords truly intend to use the rental unit for their own purposes.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 49(7) of the *Act*.

Given the above, I dismiss the Tenant's dispute of the Notice and uphold the Notice.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlords an Order of Possession effective one month after service on the Tenant.

Given the Tenant has not been successful in the Application, the Tenant is not entitled to recover the filing fee.

Conclusion

The Landlords are issued an Order of Possession effective one month after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 07, 2021

Residential Tenancy Branch