



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, DRI, FFT**

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;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with her son and agent, CS ("the tenant"). The landlord attended. 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 – Withdrawal of Claim

The tenant withdrew the application to dispute the rent increase. This aspect of the claim is dismissed without leave to reapply.

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 because the tenant denied a request to increase the rent or to move out. The landlord denied the claim and requested an Order of Possession.

Background

The parties agreed as follows. The unit is in a duplex owned by the landlord.

The background of the tenancy is:

INFORMATION	DETAILS
Type of Tenancy	Verbal agreement, monthly
Beginning Date	July 1, 2013
Vacancy Date	Ongoing
Rent payable on first of month	\$1,525.00 (amount includes utilities, cable, internet); responsibility for monthly pest control contract in dispute
Security deposit	\$1,400.00
Arrears of Rent	None

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 23, 2022
Effective Date of Notice	August 31, 2022
Date and Method of Service	Posting tenant's door June 30, 2022
Effective Date of Service	July 3, 2022

Reasons for Issuance	Occupation by child of landlord or landlord's spouse
Application for Dispute Resolution filed - date	Jul 5, 2022

Landlord's Testimony

The landlord testified as follows. The proposed occupants of the unit are the adult children of the landlord's partner. The landlord requested the tenant vacate the unit so they can move in as the unit is a better location for them, and the move is an opportunity for their personal growth.

The tenant submitted a copy of an email to the landlord dated June 30, 2022 stating in part:

Through the exchange of text messages and in the conversations on June 6th, June 20th and June 26th, you [the landlord] have indicated that you wish to alter the terms of the tenancy. I understand the options you have proposed to be the following:

1. That I remain in the current rental unit, with an increased rental rate of \$2800.00 per month, excluding utilities and non-essential services
 - a. On June 26th, you indicated that you would be willing to pay a one-time lump sum subsidy in \$7650.00 (equivalent to a subsidy of \$1275.00 per month) paid after 6 (six) months at the proposed rental rate, in appreciation.
2. That I move to the smaller, adjacent unit at a rental rate of \$2000.00 per month, excluding utilities and non-essential services

a. As in the previous case, you offered a subsidy of \$7650.00 (equivalent to a subsidy of \$478.13 per month) paid after 16 (sixteen) months under this rental arrangement.

3. That I agree to the terms of a buyout, where I would agree to end my tenancy after two months (by September 1st, 2022) in exchange for a one-time payment of \$6100.00

4. Barring my accepting one of the three above options, that you would seek to end the tenancy under section 49 of the Residential Tenancy Act “landlord’s use of property”, ending the tenancy September 1st, 2022.

Over the course of our conversations, you have indicated that you wish to receive substantially higher rents from the property than I am currently paying. You expressed that you would like to see an annualized return on the property of between 3% and 4%, which is realizable only through substantially higher rental rates. You have indicated that in the event that I do not agree to the terms you have offered, that you would be willing to pursue an eviction citing landlord’s use of the property, and have suggested that your daughter may move into the suite to satisfy the family use provision of the Act.

In the email, the tenant refused the landlord’s suggestions in #1-3.

The landlord testified the email accurately set out his suggestions and ooptions to the tenant.

Tenant’s Submissions

The tenant testified as follows.

The tenant negotiated the current rent in February 2022 with the landlord’s father who later died. She wants to remain in the unit and believed the landlord has not issued the Two Month Notice in good faith but wants to increase the rent.

The tenant said the relationship with the landlord has been difficult since his father died with disputes over repairs and the presence of rats. The landlord does not want to pay for pest control, and this is a current unresolved issue between them.

The tenant testified to several meetings between the parties. She submitted notes she made after the parties met on June 6, 2022:

Monday June 6/2022 1:40 pm

[The landlord] also said the he felt indebted to me as a good tenant & help to his Dad. He said that the property is worth 2,000,000 And ideally he would like a 4% return on that but would be satisfied with 3% because it diversifies his investments. Overall he said he has achieved a long term rate of return of 8% on his investments. To get what he wants from the property he has to rent out my house for \$2,800.

I told him I couldn't possibly pay that and that he didn't have grounds to evict me. He told me that he could move his daughter in. I said "That's what you said to [another tenant]". He looked a little startled at that but quickly responded or we could negotiate a buyout as with [the other tenant]. He also said I could move next door and pay the same rate. It is approx. 1/3 the size

The tenant submitted many documents to support her claim that the landlord was determined to raise her rent or evict her. She claimed the landlord repeatedly informed her that unless she would agree to increase the rent, he would evict her and move his daughter into the unit.

Landlord's Reply

While the landlord acknowledged the accuracy of the communication between the parties as reported by the tenant, he claimed his main concern when he issued the Two Month Notice was for his daughter and son to live in the unit. This as the sole purpose for the issuance of the Notice.

While the landlord acknowledged discussing a rent increase with the tenant, he claimed his primary intention as to provide a home for his children.

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 adult children 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 to evict her to re-rent at an increased rate.

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 partially retaliation over repairs and pest issues. The tenant also opined that the landlord could rent the unit for substantially more rent than paid by the tenant.

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.

I have carefully reviewed the evidence. I find the tenant provided credible testimony in all aspects well supported by documents in all aspects. In this case, the tenant's testimony is in harmony with the submitted evidence.

The landlord's denial that he has any other goal than to provide his children with accommodation, unsupported by any witness or documentary evidence, provides a different version. I find this testimony does not have a ring of truth. Considering the evidence in its totality, I find the landlord's version of events not to be in 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.

I find the landlord's submissions not to be persuasive or credible. Therefore, I do not give the landlord's testimony much weight. 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 landlord's request for more rent.

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I find that the timing of the Two Month Notice so quickly after the disagreement regarding the amount of rent, 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 children 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*.

As the tenant have been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

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: November 25, 2022

Residential Tenancy Branch