



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, 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
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62
- for reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlords RB and SB appearing. The tenant, NH appeared for himself, along with an agent SM.

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 tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated August 30, 2022, with an effective date of November 1, 2022. 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. The landlord did not file any documentary evidence.

Preliminary Issue

The tenant's application for an order requiring the landlords to comply with the Act, regulations or tenancy agreement is not related to the dispute of the Two Month Notice. Pursuant to Rule 2.3 of the Rules of Procedure this matter is severed from the application. The tenant has leave to reapply on this matter.

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 tenancy commenced on March 1, 2008. Rent is currently \$900.00 per month and the landlord holds a \$400.00 security deposit in trust. The tenant still occupies the rental unit.

The landlord RB stated that the reason he wishes to end the tenancy is to allow his son and himself to live in the rental unit. The landlord's son is experiencing some medical issues and is unable to care for himself. The landlord does not wish the son to move into the family home and he is planning on occupying the rental unit with the son. The son did not attend the hearing nor provide anything in writing regarding his intention to move into the rental unit.

The tenant stated that he does not believe that the landlords are acting in good faith and he believes that the landlords have served the Two Month Notice in retaliation because the tenant has filed a separate application for dispute resolution regarding a rent increase. The Two Month Notice was served shortly after the landlords received the other dispute notice. He also stated that the landlord initially told him that the landlords' cousin was going to occupy the rental unit.

The landlord RB denied telling the tenant initially that the intended occupant of the rental unit was his cousin. He also acknowledged that the tenant had filed a separate application for dispute resolution which is still outstanding and related to a rent increase as well as property maintenance. He denied however that the other dispute was the reason for the Two Month Notice.

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 landlords provided no documentary evidence in support of his intention to move into the rental unit along with his son. The tenant has raised the issue of good faith and whether the landlords intend to actually occupy the residence. Specifically, the tenant points to the other outstanding dispute and the timing of the Two Month Notice.

RTB Policy Guideline 2 provides guidance in a consideration of whether there is good 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)).

Due to the lack of evidence that the landlords actually intend to occupy the rental unit with a family member, I find that the landlords have not met their onus to establish that the landlord and a family member intend in good faith to occupy the rental unit.

The tenant's application to cancel the Two Month Notice is granted. As the tenant was successful in his application, he is entitled to recover his filing fee of \$100.00.

Conclusion

The tenant's application to cancel the Two Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act. The tenant entitled to recover the filing fee and is permitted to deduct \$100.00 from one month's future rent on a one time basis.

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 07, 2022

Residential Tenancy Branch