



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on June 16, 2022, for monetary compensation for loss or other money owed, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on June 1, 2012. Rent in the amount of \$1,091.00 was payable on the first of each month. The tenant paid a security deposit of \$500.00.

The tenant received an earlier Two Month Notice for Landlord's Use of Property, issued on March 30, 2022. At a hearing held on July 25, 2022, that notice to end tenancy was cancelled because it was defective and did not comply with section 52 of the Act.

On August 18, 2022, the landlord reissued the Notice. The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2022.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

Counsel for the landlord submits that the landlord wants to occupy the rental unit for more space for their family and because the landlord and their spouse have been having difficulties in their marriage and they need to have separate spaces, which is in the best interest of the children to have both parents residing in the family home.

NH testified that they are the spouse of the landlord and they have been sleeping down in the basement area of the home. NH stated that they want to be able to live in the rental unit as it has a kitchen and for their own private space; however, they would be close to their two children, and this would give them time to work on their marital problems.

The tenant testified that over the ten years of their tenancy they have had a great relationship with the landlord and their family, they would share meals, and buy presents for the children.

The tenant testified that they do not believe the landlord issued the Notice in good faith. The tenant testified that they got married and their spouse moved into the rental unit. The tenant stated that the landlord wanted to increase the rent by \$409.00 and have their spouse added to the tenancy agreement. The tenant stated there is nothing in their tenancy agreement about paying for an additional occupant or that no additional occupants were permitted.

The tenant testified that when they had a conversation with the landlord regarding the rent increase the landlord told them if they did not sign the new tenancy agreement and start paying the new rent effective March 1, 2022, they would be evicted . The tenant stated that on March 30, 2022, the landlord issued the first notice to end tenancy.

The tenant testified that the landlord is also avoiding their responsibilities to make repairs to the rental unit. The tenant indicated that there was a flood in the rental unit; however, there are still deficiencies in the repairs.

The landlord agreed that they had a good relationship with the tenant over the years.

The landlord argued that they are not trying to avoid making repairs to the rental unit. The landlord stated that the restoration company repaired the rental unit, and they even repainted the rental unit when requested by the tenant.

The landlord denies they ever threatened the tenant with eviction because they did not want to pay the higher rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

The Residential Tenancy Policy Guideline 2A reads in part,

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))

[My Emphasis added]

In this case, I do not accept the tenant's evidence that the landlord is attempting to avoid their obligation under section 32(1) of the Act by failing to make repairs. The rental unit was flooded requiring the tenant to temporarily vacate. The tenant has moved back into the rental unit, leading me to believe the rental unit was repaired and is suitable for occupation. While the tenant may have determined some of the work is deficient; however, it does not require to be done to the tenant's standard as long as it complies with health and safety standards. Further even when the tenant notified the landlord, the landlord indicated that they would have those deficiencies looked at. There is no correspondents before me that the landlord refused to do required work to ensure the rental unit complied with health and safety standards.

However, having said the above, I am not satisfied that the landlord does not have a dishonest motive for ending the tenancy.

The tenant recently married and had their spoused move into the rental unit, which is reasonable. The landlord wanted the tenant to pay an additional \$409.00 per month, commencing March 1, 2022, this is a significant rent increase of approximately 40%.

While I accept it was the right of either party to attempt to renegotiate the tenancy; however, when those attempts fail and there is no breach of the tenancy agreement to end tenancy for cause, it is problematic for the landlord when within 30 days of that

disagreement they are attempting to end the tenancy by issuing the Notice under section 49 of the Act.

Even if I accept the landlord's spouse has an honest intent to occupy the rental unit due to marital issues, although there is no supporting evidence, such as a letter from a counsellor. However, I find it more likely than not that the landlord did have a dishonest motive for ending the tenancy, which was to ensure the tenant was evicted because the tenant refused to pay a rent increase of approximately 40%. I find I am not satisfied that the landlord issued the Notice in "good faith". Therefore, I grant the tenant's application and cancel the Notice. The tenancy will continue until legally ended.

As the tenant was successful with their application. I find the tenant is entitled to recover the cost of the filing fee. I authorize the tenant a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord to recover this award.

Conclusion

The tenant's application to cancel the Notice, issued is granted. The tenant is entitled to a onetime rent reduction of \$100.00 from a future rent payable to the landlord to recover the cost of the 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 08, 2022

Residential Tenancy Branch