



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on November 17, 2022. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were present at the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each others' evidence packages. No service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As

a result, I exercised my discretion to dismiss all of the Tenants' application, with leave to reapply, with the exception of the following claim:

- to cancel the 2-Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on or around June 30, 2022. The Landlord issued the Notice for the following reason:

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).

- *The Landlord or the Landlord's Spouse*

In the hearing, Landlord explained that he requires this rental unit so that he and his son can move in. The Landlord explained that he currently lives with his wife at a separate house and they have a large blended family. The Landlord has 3 sons and 1 daughter, and the Landlord's wife has 1 son and 1 daughter. The Landlord explained that currently the parties are all living together, and there have significant challenges with family dynamics in the past few months, which make the current living arrangements unsustainable. As a result, the Landlord stated that he is planning to move out of his current house with one of his son's, W.B., and move into the rental unit to live separately and apart from his wife and the rest of her family.

The Landlord explained that his son, W.B., is having significant mental health challenges, and he attempted suicide in May 2022, just before high school graduation. The Landlord stated that W.B. is on several medications to try to stabilize him. However, things are not going smoothly, and he is not getting along with the other kids in the current house they live in. The Landlord stated that this conflict has also caused significant strain on his marriage, and as a result of all the conflict and dysfunction amongst the children, he is going to legally separate from his wife, and live with W.B. to keep an eye on him, and try to help him stabilize.

The Landlord explained that his two oldest sons are in the process of moving into a different rental unit, and he is only moving in with his 3rd son, W.B., to support his mental health recovery.

The Landlord provided a corroborating signed letter from his son, W.B., confirming the plans and a letter from his wife, J.W., confirming that the Landlord is moving out of the family home due to W.B.'s behavioural challenges and the impact on their current living arrangement. J.W. confirmed that the Landlord is moving into the rental unit to live separately and to assist W.B.'s development and recovery.

The Tenant asserts that the Landlord is trying to evict her to raise the rent and make more money, since he has previously tried to evict her a couple years ago for non-payment of rent. The Landlord stated this issue is unrelated, as the previous eviction notice was for non-payment of rent 2 years ago.

The Tenant stated that when she was served with this 2 Month Notice, the Landlord told her that he was potentially getting a divorce with his wife, and that was why he needed to move in. The Tenant pointed to the photo taken from the Landlord's Facebook page, showing the Landlord and his wife went to dinner over the summer to celebrate an anniversary. The Landlord stated that he is still moving forward with his plans, to live separately from his wife, due to challenges with his son. The Landlord stated he would never post the mental health challenges on Facebook, so the Tenant is misrepresenting based on a single photo posted.

The Tenant stated that the Landlord has evicted another one of his Tenants with a 2 Month Notice, and then he never lived in it, which means he is probably doing the same with her tenancy. The Tenant provided no corroborating evidence of this previous eviction with the other Tenants. The Landlord denies ever issuing a 2 Month Notice to the other Tenants, and stated they moved out on their own.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to occupy the unit (as he has indicated on his 2-Month Notice).

I have considered the totality of evidence and testimony. I note the Tenant asserts that the Landlord has issued this Notice in bad faith because he wants to raise the rent. The Tenant further asserts that the Landlord issued a 2 Month Notice to another Tenant on

the rental property, and then failed to follow through with the grounds on the Notice. However, note the Tenant has provided no corroborating evidence to support that the Landlord has issued any previous 2 Month Notices, and then failed to follow through with the reasons behind it.

The Landlord refutes the allegations of bad faith, and has provided an explanation regarding why he requires the rental unit. I found the Landlord's explanation was detailed and compelling, and is supported by written statements from his son, who is moving into the rental unit with him, and his wife, who corroborates the Landlord's intentions to live separately from her. The Tenant provided a photo of the Landlord's anniversary dinner this summer (photo on Facebook), to show that the Landlord's relationship with his wife is not as bad as he is portraying, such that he must move out and that he is getting a divorce. However, I note the Landlord stated this is only one angle on his life, and there are many other layers, including dysfunction with his son, and step-children, which are predominantly driving him to move away from the current family home into the rental unit.

When weighing all of this evidence, I find it more likely than not that the Landlord and his son intend to move into the rental unit. I accept that the Landlord's son is struggling heavily to get along with other members of the blended family, and that he is having significant psychological and emotional issues which caused him, recently, to attempt suicide. I further accept the Landlord's explanation that this type of situation would warrant a move into the rental unit.

Ultimately, after looking at the totality of the situation before me, I find the explanation from the Landlord regarding his need for the rental unit is reasonable and I find he has sufficiently rebutted the allegations of bad faith.

I find the Landlord has sufficiently supported his reasons to issue the 2-month Notice. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective 2 days after service on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: November 18, 2022

Residential Tenancy Branch