



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and his wife, the Landlord's Agent, the Tenant, and the Tenant's Translator attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice served by registered mail, and by email on the Tenant's request, on May 30, 2022, the Canada Post Tracking Number is noted on the cover sheet of the decision, the Tenant confirmed receipt of the email, but not of the registered mail package, Two Month Notice is deemed served on June 2, 2022;

- the Tenant's Notice of Dispute Resolution Proceeding package (the "NoDRP package") and evidence served by email on June 15, 2022, the Landlord confirmed receipt of the NoDRP package on June 15, 2022, but they received the evidence on July 31, 2022;
- the Landlord's evidence was served by email on July 30, 2022, August 9, 2022, August 29, 2022 and October 6, 2022, the Landlord confirmed that the Tenant replied to each email, the Tenant does not remember as there were so many emails, I find the Landlord's evidence is deemed served on August 2, 2022, August 12, 2022, September 1, 2022, and October 9, 2022 respectively.

Pursuant to Sections 71, 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Naming parties

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenants' application, the parties named were one adult tenant, and her minor child. I note the minor child is not listed as a party on the tenancy agreement or the Two Month Notice submitted for this matter. I find that the Tenant's child is a minor and is an occupant in the rental unit with the Tenant, but they are not party in this proceeding. I am amending the Tenants' party name to the correct legal name of the Tenant as reflected in the tenancy agreement and the Two Month Notice. The Tenant's correct legal name for this tenancy matter is noted in the style of cause of this decision.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy agreement and the parties confirmed that this tenancy began as a fixed term tenancy on August 15, 2021. The Tenant testified that she moved into the rental unit on August 9, 2021. The fixed term ended on August 15, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,150.00 payable on the first day of each month. A security deposit of \$1,075.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the landlord or the landlord's spouse's close family member will occupy the unit, specifically the father or mother of the landlord or the landlord's spouse. The effective date on the Two Month Notice was August 15, 2022.

The Landlord's family tried all living together in the Landlord's six-bedroom home, but this arrangement has not worked out. Currently, in their family home is the Landlord, his spouse, their three children, the paternal parents, and the maternal parents. The Landlord's spouse's parents no longer sleep in the same bedroom, so there is no longer enough room for this family to all live together. The Landlord's Agent submitted that there are too many private disagreements in the family home with all these family members.

The paternal parents lived in the rental property prior to the Tenant moving in. The paternal parents planted a garden at the rental home backyard which they have tended and harvested there. The Tenant was aware of the Landlord's parents maintaining a garden in the backyard of the residential property. The Landlord's paternal parents moved back into the family home to help take care of the children. One child is a niece and not actually a child of the Landlord and the Landlord's spouse. The Landlord's paternal parents have a great attachment to the rental property.

After receiving the Two Month Notice, the Tenant questioned the Landlord's intent about moving his parents into the rental property. The Landlord's Agent submitted that initially the Tenant was agreeable to moving out, then later she asked for \$10,000.00 of compensation for her to move out.

The Tenant submits that there are lots of stairs in the rental unit. On the main floor is only the garage, then on the second and third floors are the main living areas, like kitchen, living room and bedrooms. The Tenant does not believe that a 72-year-old man wants to live in this tall, narrow townhome space with lots of stairs. Additionally, the

Landlord's parents have continued to not only use the backyard space for their garden, but also have continued to receive their mail in the rental unit's mailbox.

The Tenant testified that at the beginning of the tenancy, the Landlord gave her the option of living in a suite in the Landlord's home or choosing the rental unit. The Tenant chose the townhouse to rent. The Tenant submitted that when inquiring about this rental unit, the Landlord promised her that the rental unit would be open for the Tenant to reside in for five years or more. The Tenant reported a conversation between the Landlord's spouse and the Tenant. The Tenant stated the Landlord's spouse told her that rent in this rental unit should be \$3,000.00. The Tenant believes this is the reason why the Landlord is trying to evict the Tenant, because the rent is too low.

The Landlord's Agent denied that conversations ever happened about:

- Providing the Tenant a choice between living in a suite in the Landlord's home or living in the rental unit townhome;
- A promise that the availability of living in the rental unit for more than five years was a certainty; and,
- A conversation between the Landlord's spouse and the Tenant about the rent amount for the rental unit being too low.

The Landlord's Agent advised the Landlord that he must compensate the Tenant with one month's rent for giving the Two Month Notice, and the Landlord is aware of the 12 months rent penalty if the Landlord's parents do not move into the rental unit for at least six months.

The Landlord's Agent said that a change of address will happen for the paternal parents when it is needed. At present, there are too many conflicts in the Landlord's home. The lifestyle habits, especially on an educational level is on a personal level.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

49 (1) *In this section:*

"close family member" *means, in relation to an individual,*

- (a) the individual's parent, spouse or child, or*
- (b) the parent or child of that individual's spouse;*

...

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*
 - (i) not earlier than 2 months after the date the tenant receives the notice,*
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*

...

(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.*

...

(7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*

(8) *A tenant may dispute*

- (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

The Landlord's Two Month Notice was deemed served on June 2, 2022. I find the Two Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on June 3, 2022 which was within 15 days after receiving the Two Month Notice.

The Tenant made a claim that she did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

B. 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.

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. 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.

The Landlord's submissions are that there are too many family members residing in the family home, and despite the reasons for the paternal parents moving back into the family home, the conflicts and tensions are now too severe, and the Landlord needs his

parents to move back into the rental unit. The Landlord's parents have maintained a garden at the rental unit, and the Tenant said they still receive their mail at the rental unit address.

The Tenant does not believe that the Landlord has the honest intention to do what he said he wants to do in the Two Month Notice. The Landlord's parents are elderly and because there are so many stairs in the three-storey rental unit, she does not believe they can comfortably live there. The Tenant believes that the Landlord wants the unit back because they want to rent it out for a higher amount.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the totality of the submissions of the parties, I find that the Landlord has not proven on a balance of probabilities that he meets the good faith requirement that his parents will be moving into the rental property, and consequently I cancel the Landlord's Two Month Notice. The Tenant's application to dismiss the Two Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is granted.

The Tenant may withhold \$100.00 from one month's rent to recover her application 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 Act.

Dated: November 04, 2022

Residential Tenancy Branch