



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 an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing and the tenants attended the hearing, represented by their counsel, NK. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord’s evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The landlord testified that her name was misspelled in the tenants’ application for dispute resolution. I reviewed the tenancy agreement and noted that the landlord’s surname didn’t match the surname provided on the application for dispute resolution. Tenant’s counsel sought to amend the application and I granted the request. The landlord’s correct name is reflected in this decision on the cover page.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on June 1, 2019, becoming month to month on May 31, 2020.

The landlord gave the following testimony. The rental unit is a legal basement suite located in the landlord's family home. On July 31, 2022, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use by personally serving the tenant, ZD. A copy of the notice to end tenancy was provided as evidence. It states the rental unit will be occupied by the landlord or the landlord's close family member. The family member occupying the rental unit was identified as the father or mother of the landlord or the landlord's spouse. Together with the notice to end tenancy, the landlord served the tenants with an email dated March 30, 2022 from Citizenship and Immigration Canada which was addressed to the landlord's mother. It states:

The processing of your application for permanent residence in Canada is almost complete. You must complete the following steps **within 30 days** in order for our office to issue your Confirmation of Permanent Residence and, if applicable, your permanent residence visa. If for any reason you are not able to meet this deadline, please inform our Hong Kong **immediately** via the IRCC Web Form: <http://www.cic.gc.ca/english/contact1s/web-form.asp> with details concerning your situation.

The landlord testified that she purchased a ticket for her mother to come to Canada in July, 2022. After purchasing the ticket, she served the tenants with the notice to end tenancy. On September 20, 2022, her mother arrived in Canada and "landing papers" were issued at the airport. In evidence, the landlord provided a *Government of Canada*

Confirmation of Permanent Residence issued in her mother's name. This document shows the document was issued at Beijing on 2022/04/26; the expiry date for the *Confirmation of Permanent Residence* is 2026/04/26; and the sponsor is her child, the landlord in these proceedings.

The landlord testified that since arriving, her mother has been living in her house with her husband and two daughters, aged 12 and 15. Her mother has developed knee problems making it difficult for her to go up and down stairs. When the tenants vacate the rental unit, the intention is to either have one of the daughters move downstairs, or the landlord and her husband would take over the space. Either way, she and her husband will occupy one of the two bedrooms in the unit.

The tenants' counsel made the following submissions. The landlord has not shown "good faith" in serving the 2 Month Notice to End Tenancy for Landlord's Use upon her clients. The copy of the March 30, 2022 email served to the tenants indicates the landlord's mother's permanent residence application is almost complete. The tenants submit that since the permanent residence visa has not yet been approved, the landlord has not shown good faith in ending the tenancy.

Tenant's counsel notes that in her evidence submission, the landlord states "*our parent is going to live with us a wile*" (as written). Counsel submits that the landlord doesn't specify how long the parent will live with them: 1, 2 or 3 months. Further, in testimony, the landlord was unsure who is going to occupy the rental unit. Good faith requires an honest intention to follow through and the landlord has not done so because the notice to end tenancy was served before the permanent residence application was approved.

Analysis

The tenants did not dispute the landlord's testimony that the notice to end tenancy was personally served on July 31, 2022. I find it to be served on this date pursuant to sections 88 and 90 of the *Act*. The tenants filed their application to dispute the notice to end tenancy within the 15 days as required by section 49, on August 12, 2022.

Ending a tenancy for occupancy by a landlord, purchaser or close family member is examined in Residential Tenancy Branch Policy Guideline PG-2A. The issue of "*good faith*" is explored in part B of the guideline.

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.

The tenants submit that the landlord lacked “*good faith*” in issuing the notice to end tenancy on July 31st, based on the email dated March 30th, indicating the landlord’s mother’s permanent residence application is almost complete. According to their argument, the permanent residence visa had not yet been approved and therefore the landlord has failed to establish she is acting in good faith.

Here, the tenants are correct in noting that as of March 30, 2022, the permanent residence application was not yet complete. I note, however that the landlord didn’t serve the tenants with the notice to end tenancy immediately upon receiving that email. Rather, the landlord waited until the application was further along before taking the steps to end the tenancy with the tenants. Turning to the *Confirmation of Permanent Residence* document submitted by the landlord, I note that it was issued on April 26, 2022, in Beijing. I accept the landlord’s testimony that she waited until July 2022 to purchase her mother’s ticket to Canada, with the expectation that her mother would arrive on September 20th. Taking into account the September 30th effective (move-out) date stated in the notice to end tenancy, I find the timing of the notice to end tenancy to be in line with her mother’s expected arrival.

The tenants did not dispute the landlord’s testimony that her mother arrived in Canada on September 20th, although I gave them the opportunity to cross examine the landlord. I therefore accept the undisputed testimony from the landlord that her mother arrived from China on September 20th and is currently residing with the landlord at her residence with the landlord’s family. I also accept the landlord’s testimony that it may end up that the landlord and her husband or one of their children will eventually occupy the rental unit because her mother has developed knee or leg pain causing difficulty in using stairs.

Policy guideline 2A goes on to state at part C:

Occupying the rental unit

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under

a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

I find that the landlord has shown good faith in ending the tenancy so that the landlord or a close family member of the landlord can occupy the rental unit. Consequently, I uphold the notice to end tenancy signed on July 27, 2022.

Pursuant to section 55(1), if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have examined the landlord's notice to end tenancy and I find that it complies with the form and content provisions of section 52. I grant the landlord an Order of Possession.

The effective date stated on the notice to end tenancy has passed, however the landlord stated that if she was successful in being awarded an Order of Possession, it could be made effective on a later date. Accordingly, I grant the landlord an Order of Possession effective 14 days after service upon the tenants.

The tenants' filing fee will not be recovered as this application was not successful.

Conclusion

I grant an Order of Possession to the landlord effective **14 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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