



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 29, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 27, 2022 (the "Two Month Notice");

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 15, 2021. Currently, the Tenant pays rent in the amount of \$1,100.00 which is due to the Landlord on the first day of each month. The Tenant paid a security and a pet damage deposit, each in the amount of \$550.00, both of which the Landlord continues to hold. The tenancy is still ongoing.

The Landlord testified that his agent served the Tenant with a Two Month Notice dated September 27, 2022 with an effective date of November 30, 2022. The Landlord could not recall when the Two Month Notice was served. The Tenant confirmed having received the Two Month Notice and disputed the Two Month Notice on September 29, 2022. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 stated that he has a primary residence in Vancouver, and two additional properties in Prince George. The Landlord stated that one of his properties in Prince George sustained substantial damage caused by a fire, and is in need of repair. The Landlord stated that he is required to oversee the work taking place. As such, the Landlord stated that he intends to occupy the rental unit for up to one year to be closer to the jobsite.

The Tenant responded by stating that she occupies the lower basement suite of the rental property. The Tenant stated that there is an upper 3-bedroom unit which is currently vacant and has been for some time. The Tenant stated that a family of 5 had previously occupied the upper rental unit. The Tenant stated that the Landlord could easily occupy the upper portion of the rental property, rather than ending her tenancy. The Tenant further stated that there have been some issues between the Landlord's Agent and the Tenant with respect to maintaining the rental property. As such, the Tenant has applied to cancel the Two Month Notice.

The Landlord confirmed that there is an upper unit at the rental property. The Landlord stated that he requires full access to the rental property as he will be bringing many possessions of high value, and also requires additional space to store building materials. The Landlord confirmed that there is a door separating the two units, however, there is a shared laundry area and garage. The Tenant stated that the garage is divided in the middle with a wall as it had been previously shared with the upper unit occupants without issue.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord served the Tenant with the Two Month Notice. While neither party could recall the date of service or receipt, I accept that the Two Month Notice is dated September 27, 2022 and the Tenant disputed the Two Month Notice of September 29, 2022. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act, and I find the Tenant disputed the Notice within the 15 day time limit under Section 49(8) of the Act.

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. As such, I find that the Landlord has the burden to prove that they have served the Two Month Notice in good faith.

According to Policy Guideline 2A 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)).

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. If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case. **If there are comparable vacant rental units in the property that the landlord could occupy,**

this may suggest the landlord is not 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.

In this case, I accept that the parties agreed that the rental property is comprised of an upper unit which is currently vacant, and a lower unit which is currently occupied by the Tenant. The Landlord has indicated that he requires the lower rental unit to occupy the entire home while he oversees work being done at a different nearby property.

I find that the Landlord has provided insufficient evidence to demonstrate that he requires the use of the entire rental property. The Landlord stated that it would just be himself occupying the home. The Landlord has provided insufficient evidence to support the need to occupy the lower portion of the rental property. I accept that the upper and lower units are separated by a door. As such, the Landlord has provided insufficient evidence to demonstrate that the upper unit could not safely accommodate his possessions of high value, or materials in the separated garage. There is insufficient evidence before me to indicate that the tenancy needs to end for Landlord's use of the property, as there is a comparable vacant unit available to the Landlord for his use.

In light of the above, I cancel the Two Month Notice, dated September 27, 2022. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The Two Month Notice issued by the Landlord dated September 27, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

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 24, 2022

Residential Tenancy Branch