



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants attended the hearing and were represented by counsel, DL. The landlord attended and was assisted by an agent/interpreter, HR. As all parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and stated he had no concerns 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.

Issue(s) to be Decided

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

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.

I gave the tenants the opportunity to present their submissions first, so that the landlord could understand the tenant's argument and position.

The rental unit is a single-family home with a large outbuilding. This outbuilding has space for at least 5 cars, as the tenant has provided photographs of it with 5 separate garage doors.

The tenant JB testified that the co-tenant operates a furniture restoration business and has amassed a lot of furniture inventory to refinish and sell. In 2019, they began searching for a property where they could reside in and the co-tenant KH could work on her business. In June 2020, they entered into discussions with the landlord in these proceedings for a long term tenancy fixed for 5 years. The reason they wanted such a long tenancy was because of the volume of furniture being stored and worked on by the tenants was so large, it filled 18 moving trailers to relocate to this rental unit.

The tenants testified that rent was originally set at \$4,600.00 per month, with the original agreement that rent could be increased to \$5,000.00 per month in the second and third years. The tenant testified that it was understood between the parties that rent in the following fourth and fifth years would be commensurate with the legislated yearly increases announced by the government.

The tenants testified that it was their understanding that they and the landlord were bound by a fixed-term lease of 5 years. The tenant JB testified that he made several phone calls and texted the landlord multiple times asking him to produce a tenancy agreement for them to mutually sign. In September of 2020, shortly after moving in, the tenant acknowledges he forgot about pursuing the signed agreement as school was

under way. He stopped asking the landlord for the written agreement, still believing the lease term was set for 5 years.

According to the tenant, the landlord came onto the property and spoke to the tenants about possible other uses for the property, including storing storage containers, housing migrant workers and a portable office for his son. The landlord never told him that he considered moving into the property himself.

Tenant's counsel submits that the landlord owns several other properties, many of which are residential, however no documents corroborating this were provided.

On May 27, 2022, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use by posting a copy to the tenants' door. No copy of the notice was provided as evidence, however the tenants testified that all 4 pages were served upon them. The tenants testified that page 2 of the notice indicated that the reason for ending the tenancy was that the unit would be occupied by the landlord or a close family member – the landlord and his spouse.

The landlord gave the following testimony. He is a simple blueberry farmer. He purchased the property for the specific intention of moving into it. He and his family currently live in a small single-family home with 2 other families and there are also labourers living on this property. The parking is tight and there is a lack of living space and privacy for his teenage children. His 27-year-old adopted son also lives with them. He will be starting his own family and needs more space. Lastly, their current house is close to sprays used in blueberry farming.

The landlord acknowledges he has other properties, none of which are residential. They are blueberry farms.

The reason he wants to end the tenancy is because his son currently attends a "bad school". This property is within walking distance to the private school that he wishes for his son to attend.

The landlord denies the tenancy was ever fixed for 5 years. It was always his understanding that the tenancy was month to month. He speaks limited English and if something important is sent to him in writing, he has his son interpret it and he responds. The landlord has had no emails or other communications from the tenants regarding a fixed term tenancy. If he understood the tenants wanted a fixed tenancy, he wouldn't have rented the property to them in the beginning.

Analysis

The tenants seek to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use based on two arguments. The first argument is that parties are bound by a fixed five-year tenancy which cannot be ended by a notice to end tenancy before the specified end date. The second argument is that the landlord has not shown good faith in ending the tenancy.

The Residential Tenancy Branch has produced Policy Guideline PG-30 [Fixed Term Tenancies] to guide landlords and tenants understand the issues relevant to this topic. Part A of the guideline reads:

A. LEGISLATIVE FRAMEWORK

Section 1 of the Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date. Neither party may end a fixed term tenancy early, except under the circumstances described in section C of this guideline.

A fixed term tenancy agreement must state the date the term ends.

The tenants argue that it is the landlord's onus to prove the tenancy was month to month rather than fixed term. On this point, I find fault in the tenant's argument. While rule 6.6 puts the onus on the landlord to prove the reasons for ending the tenancy and section 49 places the onus on the landlord to demonstrate they plan to occupy the rental unit for at least 6 months with no dishonest motive; there is no specific requirement under the legislation that the landlord prove the tenancy was month to month rather than fixed term.

Section 1 of the Residential Tenancy Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

In this case, since there was no written agreement, the tenancy agreement is an oral agreement. As the agreement is oral, there is no way for me to determine the definite commencement date and expiry date. As the policy guideline states, *A fixed term tenancy agreement must state the date the term ends.*

What I have before me is simply the tenants' assertion that it was a fixed five-year tenancy without any written documentation to corroborate it. Although he testified that he sent multiple texts to the landlord asking to provide a copy of a tenancy agreement acknowledging the five-year fixed term nature of the agreement, no such texts were found in the evidence supplied by the tenant. Nor do I find the agreement to raise rent from \$4,600.00 to \$5,000.00 to be indicative of anything more than the parties mutually agreeing to raise the rent on a month to month tenancy.

Further, throughout the hearing, the tenants argued that they acted on the assumption that they had a 5 year fixed term tenancy with the landlord. However, in their application, the tenants state, "*...they negotiated and agreed with the Landlord/Respondent to an unwritten agreement where the applicants would be granted a 37 month fixed term lease for the subject property...*" Further on in the application, the tenants state, "*The applicants want the Landlord to comply with the 3-year fixed term lease agreement negotiated by the parties*". It is apparent to me that if they were bound to a fixed term tenancy, not even the tenants knew the agreed to length of that supposed fixed term.

Without any written proof that the tenancy was fixed, with an agreed to end date, I find the oral tenancy agreement was a periodic or month to month. Consequently, I find the provisions of section 49(2)(a)(iii) which prohibits the serving of a notice to end tenancy for landlord's use before the date specified as the end of a fixed term tenancy do not apply.

The tenants also seek to have the landlord's notice to end tenancy cancelled because the landlord has not shown good faith in ending the tenancy for the purpose of occupying it for a period of at least 6 months. The issue of good faith is examined in part B of Policy Guideline PG-2A [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member]:

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.*

The tenants contend that the landlord has other residential properties that the landlord could move his family into, yet they have not provided me with any documentary evidence to corroborate this. The landlord acknowledged owning other pieces of real estate but testified that these are blueberry farms, not residential properties. I note that none of the tenant's materials raised this issue, so the landlord could not reasonably anticipate this argument. As such, I wouldn't expect the landlord to provide evidence to corroborate his testimony. On a balance of probabilities, I accept the landlord's version, that he does not own any other residences to move his family into.

Likewise, I find the landlord's reasoning for moving into the rental unit to be compelling. I find it reasonable that he wants his son to attend the private school located within walking distance of the residential property rather than the "bad" school his son currently attends. I also find it reasonable that he no longer wishes to continue living in a single family home alongside two other families, sharing parking areas and close family quarters. Further, there is nothing preventing the landlord's son from conducting his business from a portable office installed on the property once the landlord has taken possession of it. Based on the evidence before me, I am satisfied the landlord intends in good faith to occupy the rental unit. I uphold the landlord's 2 Month Notice to End Tenancy for Landlord's Use.

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 the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Neither party provided a copy of the notice to end tenancy for me to review, however based on the testimony of the tenants, stating they received all 4 pages, identified the reason for ending the tenancy on page 2, and supplied page 1 of the notice in evidence,

I am satisfied the notice meets the form and content requirements of section 52. Consequently, I grant the landlord an Order of Possession pursuant to section 55(1) of the Act.

The effective date stated on the notice to end tenancy has passed. Given the amount of furniture the tenants need to move from the rental unit, I grant the landlord an Order of Possession effective November 30, 2022 at 1:00 p.m.

As this tenancy is ending, the tenants' application seeking that the landlord comply with the Act is dismissed without leave to reapply.

As the tenants' application was not successful the tenants are not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **November 30, 2022 at 1:00 p.m.** 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 04, 2022

Residential Tenancy Branch