



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT
 OPL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant has applied for an order cancelling a notice to end the tenancy for landlords' use of property; an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application. The landlords have applied for an Order of Possession for landlords' use of the property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant.

The tenant and both landlords attended the hearing and the tenant was assisted by Legal Counsel. Both landlords and the tenant gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I alerted the parties to the Rules of Procedure, which specify that multiple applications contained in a single application must be related. One of the landlords indicated that the only monetary compensation that the landlords seek is recovery of the filing fee. If the landlords are successful with the application, generally the landlords will be entitled to recovery of the filing fee, and since the landlords have no other monetary claim, I dismiss the landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Also, at the commencement of the hearing, one of the landlords indicated that the tenant's application contains incorrect names of the landlords, and the Style of Cause

on the frontal page of this Decision reflects an amendment to the tenant's application, by consent.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided is:

- Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith, or should it be cancelled?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The first landlord (JN) testified that this month-to-month tenancy began on November 1, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$2,550.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,275.00 as well as a pet damage deposit in the amount of \$1,275.00, both of which are still held in trust by the landlords. The rental unit is a carriage house, or coach house on the landlords' property, and the landlords currently reside in a main house on the same property. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on June 26, 2022 the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated June 26, 2022 and contains an effective date of vacancy of August 31, 2022. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse.

The landlords plan to move into the carriage house with their 2 children, aged 11 and 13, and the main house on the property will be used for short-term rentals. The landlords also run a home business, which will stay in the main house. The carriage

house has 2 bedrooms, one of which is on the lower level and the other is a loft in the upper level. The main bedroom is divided into 2 rooms, and the landlords' son will have that sectioned-off area. The community will not allow the landlords to run their business in both homes, so the business will only operate in the main house garage. The landlords plan to keep the business at the main house, where the landlords currently reside, but to not move any part of the business to the coach house. The landlords cannot afford to leave the main house vacant and it will be a short-term rental on Air BNB. The landlords were away for about 2 years travelling, and while away the main house was rented to 2 separate tenants.

The landlord also testified that the original plan was to issue the notice to end the tenancy in early summer hoping that the landlords could move during summer months, but gave an extension of 3 months to the tenant, and the tenant's dispute put the plans on hold. Once the tenant moves out the landlords will move into the carriage house and start to advertise the short-term rental in the main house. What the landlords do with the main house had no relevance to the landlords moving into the coach house.

The landlords' evidence also includes a Summary of Evidence for Notice of Dispute Resolution Proceeding, which includes a Background, descriptions and a list of the landlords' evidentiary material.

The second landlord (MN) testified that when interviewing the tenant, the tenant knew that the landlords had previously lived in the coach house, and the landlord told the tenant that the landlords would be moving back in, and the landlords want to move in. The main house has no relevance to that. As a family, it would be financially better to be in the coach house. The landlords have been travelling and living in small spaces, and it is imperative that the landlords move back into the coach house.

The tenant testified that the coach house is about 1,500 square feet with 2 ¼ levels with a small loft up top. The bedroom downstairs is a theater room, and the landlords added a bed. The theater room is the only bedroom in the house, with additional sleeping area in the loft. It is very small, and there is no door separating and the area is the size of a king size bed, then a small kids' area. The only space in the loft has room for a king sized bed.

The downstairs area used to be part of the garage and has a cement floor, and looks like a converted garage. The tenant disagrees that the landlords could split it into 2 bedrooms. The coach house would not comfortably house 4 people.

The landlords verbally told the tenant that they wanted to expand their business and use the tenant's parking spaces and a room for storage, but did not mention an Air BNB or about moving into the coach house. The tenant just learned this month, about a week ago, that the landlords intend to rent the main house as a short-term rental. The tenant has also provided a copy of the Village bylaw, as well as copies of text messages exchanged between the parties. Also provided is an email from the landlords to the tenant dated June 10, 2021 wherein the landlords indicate that they are not going to move into the coach house, but into the main house and will start a custom van conversion company when the landlords returned from their trip. It also states that the coach house is too small to support the venture, and the landlords need all 3 car garages and 2 basements.

The tenant's evidence also includes a copy of a Two Month Notice to End Tenancy For Landlord's Use of Property issued to the previous tenant of the main house. It is dated May 8, 2021 with an expected date of vacancy of July 15, 2021. The reason for issuing it is that the rental unit will be occupied by the landlord.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

The tenant doubts that the coach house is suitable for the landlord's family; it's too small, and looking at the email from 2021 provided as evidence, and what has transpired, the landlords didn't understand how to end the tenancy but expected the tenant would just move out. The plans in 2021 were very different. The landlord says that the landlords cannot leave the main house vacant, but that's very late in the conversation. Good faith is the issue.

SUBMISSIONS OF THE LANDLORDS:

The landlords' family wants to move back into the coach house, which is roughly 1,500 square feet and the landlords lived there from 2017 to 2019 with more than enough space, and they want to do the same thing again.

The landlords didn't think they had to explain what they will do with the main house, but thought it might be beneficial, so added the Air BNB evidence which has been referred to in this hearing. This was the plan all along. The landlords are fully aware of consequences, and will move into the coach house. The original plan in 2021 was not to move into the coach house, but that was close to 2 years ago, and the landlords have been in the main house for awhile. Plans have changed for financial reasons.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must also demonstrate good faith intent to use the rental unit for the purpose contained in the Notice. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. In this case, good faith intent is disputed.

I have reviewed all of the evidentiary material and have considered the submissions. The tenant's counsel takes issue with the change in the landlords' intention from 2021 to 2022, submitting that the change was very late in the conversations.

I have also considered the evidence showing that the landlords gave a similar notice to end the tenancy for the previous tenant in the main house. It is dated May 8, 2021 with an expected date of vacancy of July 15, 2021. The Two Month Notice in this case is dated June 26, 2022, which is more than a year later. It appears from the emails that the landlords had a different plan in 2021. The landlords' evidence indicates that the coach house is suitable for the family's needs, and to move there is beneficial for the landlords' financial position and for the business. The tenant doesn't believe that the landlords would be comfortable in the smaller coach house, but that's not a consideration given that the landlords have lived in it previously, and now intend to run a business from the main house. There is no provision under the *Act* preventing the landlords from renting the landlords' current residence; only that the landlord is acting in good faith.

After reviewing all of the evidence and considering the testimony, I find no reason to find that the landlords are not acting in good faith. The tenant's application for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property is hereby dismissed, and I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants. The tenant must be served with the order which may be enforced.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlords in that amount and I order that the landlords may retain that amount from the security deposit held in trust, or may otherwise recover it by serving the order on the

tenant and filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlords' application for a monetary order for money owed or compensation for damage or loss is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlords may keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

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: December 2, 2022

Residential Tenancy Branch