



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 Tenants' 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's Agent, and the Tenants 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.

The Landlord personally served the Two Month Notice on July 12, 2022. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on July 12, 2022 pursuant to Section 88(a) of the Act.

The Tenants testified that they served the Landlords with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on July 29, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenants uploaded the Canada Post registered mail receipt with tracking numbers submitted into documentary

evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Landlord's Agent confirmed receipt of the NoDRP package. I find that the Landlords were deemed served with the NoDRP package five days after mailing them, on August 3, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenants are unsuccessful, are the Landlords entitled to an Order of Possession?
3. Are the Tenants 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 parties confirmed that this tenancy began as a fixed term tenancy on February 15, 2011. There were several leases renewed, but now the tenancy is on a month-to-month basis. Monthly rent is \$1,750.00 payable on the first day of each month. A security deposit of \$862.50 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlords' Two Month Notice was that the Landlord or the Landlord's spouse's child will occupy the unit. The effective date on the Two Month Notice was September 11, 2022.

The Landlord's Agent works for a property management company that manages many properties in the rental complex. He testified that the Landlord is a family corporation, a number company, and the rental unit is going to be used by the Landlord's son. The Landlord's Agent did not provide corporation documents, but he stated the Landlord is a sole owner.

The Landlord's Agent said the Landlord's son lives in another nearby city, he will be turning 18 years old very soon, and he is getting independent. He stated that everything is organized, and this move has been planned for a year. The Landlord also works for

the property management company, and when the son relocates to the rental unit, he will be working in the company as an on-site manager.

The Tenants testified that this eviction has more to do with increasing the rent amount for the rental unit, than the Landlord's son moving in. On the first occasion, the Landlord's Agent and the Landlord approached the Tenants with a payout, but the Tenants declined. On several other occasions the Landlord's Agents and the Landlord have approached the Tenants wanting to increase their rent by \$750.00. The Tenants state the Landlord's Agents have been threatening and aggressive about getting them to sign to agree to a rent increase. The Tenants stated the Landlord's Agents told them if they do not sign for a rent increase, they would find ten things in the apartment to evict them for.

The male Tenant stated when one Agent delivered the Two Month Notice, he asked him if it was his son who intended to move into the rental unit. That Agent told him no, it was the son of the other property manager. On the day of the hearing, that was the first time that they were made aware that it was the Landlord's son.

The Tenants testified that the Landlord's Agents are posting rental units up for rent in the complex ranging from \$2,695.00 per month to \$2,895.00 per month.

In January 2022, they had not received a formal notice of a rent increase but were asked to pay an increase of \$25.00. The Tenants said it was in line with the 1.5% allowable increase this year, so they agreed to accept the increase. The Tenants were approached again in June 2022 about a \$750.00 rental increase. The Landlord's Agents wanted them to pay \$2,600.00, and the Tenants offered to pay \$2,000.00. Neither party agreed.

The Landlord's Agent submitted that rent increases can happen if the Tenants agree to the increase above the legislated amount. He said the increase in interest rates and other cost of business expenses are making it exceedingly difficult for Landlords to manage their finances. The Agent stated they have always tried to work for the Tenants in a positive way.

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;*

"family corporation" means a corporation in which all the voting shares are owned by

- (a) *one individual, or*
- (b) *one individual plus one or more of that individual's brother, sister or close family members;*

"landlord" means

...

- (b) *for the purposes of subsection (4), a family corporation that*
 - (i) *at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and*
 - (ii) *holds not less than 1/2 of the full reversionary interest;*

...

(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*

...

- (4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, 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 Tenants were served on July 12, 2022. Section 53 of the Act enables incorrect effective dates to automatically change. As the Two Month Notice was served on July 12, 2022, I find the effective date for the Two Month Notice is corrected to September 30, 2022. I find the Two Month Notice complies with the form and content requirements of Section 52 after correcting the effective date. The Tenants applied for dispute resolution on July 12, 2022 which was within the 15 days after receipt of 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 Agents' general submissions are that the Landlord's son intends to move into the rental unit. He is close to being 18 years old, and the Landlord's Agents stated that he will be working for the property management company as an on-site manager. The Tenants claimed that the Landlord's Agents are only trying to increase the rental income for the rental unit.

I question the Landlord's Agents' credibility as I find someone not even 18 years old moving into the rental unit is not well equipped to step into the role of independent living, and no less, being a manager of on-site operations in a rental unit complex. I find that considerably more credible evidence was required to persuade me that this is the truth of the matter. I find the Landlord's Agents have not proven on a balance of probabilities that the Landlord's son intends to move into the rental unit, and I cancel their Two Month Notice. The tenancy will continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlords.

Conclusion

The Tenants' application to cancel the Landlords' Two Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their 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: December 07, 2022

Residential Tenancy Branch