



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy signed on June 27, 2022 (the “Two-Month Notice”); and
- return of her filing fee pursuant to s. 72.

S.W. appeared as the Tenant. The Tenant called a witness, S.W., who provided evidence in this matter. S.F. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials. The Tenant advised that she was personally served with the Landlord’s response evidence on November 25, 2022, though she says that she was uncertain on why the Landlord’s agent provided them to her. I note that this evidence was served within the 7-day time limit imposed by Rule 3.15 of the Rules of Procedure.

Based on the mutual acknowledgments of the parties, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the Two-Month Notice be cancelled?

- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in December 2020.
- Rent of \$812.00 is due on the first day of each month.

I have been provided with a copy of the tenancy agreement by the Tenant, which I am told is an updated tenancy agreement signed with the current Landlord. The Tenant testified that she moved into the rental unit prior to the current Landlord purchasing the residential property. I am advised by the parties that the rental unit is a basement suite within a single detached home. The Landlord's agent testified that there is an upper rental unit with four bedrooms.

The Landlord's agent testified that the Two-Month Notice was posted to the Tenant's door on June 27, 2022. The Tenant acknowledges receipt of the Two-Month Notice on June 27, 2022.

I have been provided with a copy of the Two-Month Notice by the Tenant. The copy provided to me lacks the second page, though I am advised by the Landlord's agent that the Two-Month Notice was issued on the basis that his father is looking to occupy the rental unit. The Landlord, as listed in the tenancy agreement, the Two-Month Notice, and this application is a corporate entity. The Landlord's agent testified that the numbered company is owned by he and his family members, those being his father, sister, and brother.

The Landlord's agent testified that his father will be undertaking renovations within his home, which will require asbestos remediation, and that he will be moving into the rental unit during this time. No statement was provided by the father, nor was the renovations described in any detail though I am advised by the agent that the work will take some time given the asbestos remediation required.

I am further advised by the Landlord's agent that the rental unit will also require some renovations before his father can move in. The agent testified that the rental unit requires the plumbing lines replaced and that asbestos remediation will also likely be required given the age of the home. The Landlord's evidence includes a copy of a what appears to be an inspection report dated May 26, 2022, highlighting that primary plumbing lines were made of Poly B, that this material is prone to failure, and that the lines should be inspected. The Landlord's agent also says the rental unit has mould that needs to be remediated.

The Tenant argues that the Two-Month Notice was issued in bad faith. The Tenant argued that the report provided by the Landlord is dated May 26, 2022 and that she signed a new tenancy agreement with the Landlord at the same time. It was argued by the Tenant that the Landlord is moving the objective for ending the tenancy from the father's occupancy to renovations to the basement suite and that the renovations make no sense given she had just signed a new tenancy agreement.

The Tenant also testified that she spoke with the father on June 26, 2022 after the Tenant raised issue with the grass not having been cut and garbage not having been removed since the upper rental unit tenants vacated some two months prior to that date. The Tenant advises that during that conversation the father told her she should give notice and that if she did not give notice to vacate, he would do it. The Tenant described the father as aggressive at that time and further states that the father said that he follows through with his threats.

The Tenant called S.W. as a witness. S.W. was described as the Tenant's ex-wife. S.W. testified that she was at the rental unit visiting the Tenant on June 26, 2022 when the father attended. S.W. testified that she heard the father say he felt the Tenant's email was threatening, that if she was unhappy, she should give notice to leave, and that he does not make threats, he follows through with them.

The Landlord's agent denied the incident occurred as alleged by the Tenant and the Tenant's witness.

The Tenant also testified that the upper rental unit was empty when the Two-Month Notice was issued. I enquired with the Landlord's agent whether the upper rental unit was tenanted when the Two-Month Notice was served. I was told by the agent that he was unsure but that it is tenanted now. It was argued by the agent that the father moving into the upper rental unit did not make sense as it is too large for his needs and

the rent generated from the upper rental unit is needed to pay the mortgage for the property.

The Tenant confirms that she continues to reside within the rental unit.

Analysis

The Tenant seeks an order cancelling the Two-Month Notice.

I have not been provided with a full copy of the Two-Month Notice, only the first page. However, I am told by the agent and accept that it was issued on the basis that his father would be moving into the rental unit.

Pursuant to s. 49(4) of the *Act*, a landlord that is a family corporation may end a tenancy with two months notice 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. Section 49(1) of the *Act* defines a family corporation as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individual's brother, sister or close family members. Section 49(1) also defines a close family member as an individual's parents, spouse, or child or the parent or child of that individual's spouse. When a tenant receives a notice issued under s. 49(4) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8).

I find that the Two-Month Notice was served in accordance with s. 88 of the *Act* by having it posted to the Tenant's door on June 27, 2022. I accept the Tenant's evidence that she received it the same day.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application on July 11, 2022. Accordingly, I find that the Tenant filed her application within the 15 days permitted to her under s. 49(8) of the *Act*.

Policy Guideline #2A provides the following guidance with respect to the good faith requirement imposed by s. 49:

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. 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 Landlord says one of its shareholders intends to occupy the rental unit. However, I am provided with no documentary evidence to showing the Landlord's shareholders. Even if I were to accept that the father is a shareholder, I have been provided with no direct evidence of his intention to occupy the rental unit, whether that be in the form of a written statement or oral testimony at the hearing. I would assume that to be basic evidence one might wish to provide if the whole basis for issuing the notice to end tenancy was that the father intended to occupy the rental unit. That was not done in this case.

I am told that the father is renovating his house. I have been provided no evidence to demonstrate this nor was told what those renovations were. I am told that asbestos

remediation will be required at his home. Again, no evidence provided by the Landlord to support this. I am further told that the renovations will take some time, though have no evidence to demonstrate how long.

The evidence I have been provided pertains to repairs or renovations that are alleged to be required for the basement rental unit. That does not support that the father will be vacating his home for at least 6 months and would occupy the rental unit. Rather, that supports that there is a purpose ancillary to the father's occupancy, namely repairs or renovations for the rental unit, thereby contradicting the stated purpose of the Two-Month Notice.

Further, the Tenant argues that the Two-Month Notice was issued in bad faith, providing detail of a troubling incident that took place on June 26, 2022 in which the father threatened to issue a notice to end tenancy if the Tenant did not provide one herself. This is supported by the affirmed evidence of a witness who overheard portions of the conversation. The Landlord's agent provides a bare denial the incident took place as alleged by the Tenant. However, the Landlord's agent did not testify that he was present on June 26, 2022, thereby being able to speak directly on what had occurred and what was said. Indeed, it is entirely unclear to me how the agent could deny the conversation at all given he had not directly been involved or overheard the conversation. The agent's bare denial lacks credibility.

I found the Tenant's account of the conversation on June 26, 2022 to be entirely credible, which goes a long way to explaining the lack of evidence provided by the Landlord in this matter, some of which I consider to be fairly basic. I find that the Landlord has failed to demonstrate the good faith intention of its shareholder or their close family member to occupy the rental unit. Indeed, it appears more likely than not that the Two-Month Notice was issued by the Landlord in bad faith following the incident on June 26, 2022.

I grant the Tenant the relief she seeks. The Two-Month Notice is hereby cancelled.

Conclusion

I hereby cancel the Two-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Tenant was successful in her application and that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of her 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 *Residential Tenancy Act*.

Dated: December 05, 2022

Residential Tenancy Branch