



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On July 24, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing. R.V. attended the hearing as an agent, and daughter, of the Landlord, with R.B. attending as counsel for the Landlord. D.B. attended the hearing late, as counsel for the Landlord. As well, F.R. attended the hearing as a witness, and son, of the Landlord.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. In addition, all parties in attendance, with the exception of R.B. and D.B., provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on or around August 22, 2022, and R.V. confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. Furthermore, as this evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of

Procedure, I have accepted this documentary evidence and will consider it when rendering this Decision.

R.V. advised that no documentary evidence was submitted for consideration on this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2001, and that the tenancy was currently a month-to-month agreement. Rent was presently established at an amount of \$700.00 per month and was due on the first day of each month. A security deposit of \$350.00 was also paid. A signed tenancy agreement was not created by the Landlord.

All parties also agreed that the Notice was served by being posted to the Tenant's door

on July 15, 2022. The reason the Landlord served the Notice is because "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)." As well, the Landlord checked off the box indicating that it would be "The child of the landlord or landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted as September 30, 2022, on the Notice.

R.V. advised that the Landlord passed away and that she "wishes to move into" the rental unit.

D.B. then reiterated that the Landlord passed away and that there was no will, but the rental unit would be transferred to R.V. and F.R. "eventually when probate is processed".

F.R., then provided testimony and echoed that the Landlord had passed away, that "things were in limbo", and that there was "no idea what would happen with the property." He stated that the Landlord's home is large, and requires a large amount of upkeep and maintenance. He testified that if the Landlord's home is sold, R.V. "will need a place to live." He stated that they are planning on selling all of the properties owned by the Landlord, that "everything has gone up" in cost, and that they "need to do something" because of the Landlord's large mortgage. He submitted that the Notice was served due to financial circumstances.

R.V. testified that she needed to move into the rental unit as she "need[s] a place to live", even though she confirmed that she had been living in the Landlord's home for a significant period of time as her primary residence. She stated that the reason she needed to move to the rental unit was because "who knows what will happen to that house?" She confirmed that the Landlord passed away on July 24, 2022.

D.B. then advised that the Landlord owns multiple properties, and it is possible that the Landlord's home may need to be sold. He stated that there was a previous hearing held because R.V. wanted to move into the rental unit as there was "no room" at the Landlord's home. He then submitted that R.V. was not capable of assisting her mother any longer, so she needed to move because nurses were required to be at the Landlord's home to assist her. However, there was no documentary evidence provided to support this. He advised that after the Landlord passed away, the Landlord's home may need to be sold as it is too big for R.V. to maintain.

F.R. advised that since the passing of the Landlord, “everything is up in the air”, that they are “having a hard time”, and that the “logical solution was for [R.V.] to move” into the rental unit.

R.B. did not make any submissions.

The Tenant advised that R.V. had lived with the Landlord for 15 years, and she was supposed to care for the Landlord and other members of their family. She testified that there was a separate Dispute Resolution proceeding in July 2022, where she disputed another Two Month Notice to End Tenancy for Landlord’s Use of Property given for the same reason. She submitted that this notice was cancelled as there was no documentary evidence provided by the Landlord corroborating the reason that the rental unit was to be used by R.V. because nurses were required to move into the Landlord’s home. However, she did not submit a copy of this Decision as documentary evidence for consideration.

As well, she noted that the Landlord owned multiple other properties that R.V. could occupy, and she stated that the rental unit was also large with a sizable yard and would be equally challenging for R.V. to maintain. Given her understanding that it is R.V. and F.R.’s intention to sell the Landlord’s properties, and given the previous unsuccessful attempts to end her tenancy, it is her belief that the current Notice was not served in good faith either.

D.B. advised that the Landlord owns four properties and that there is a significant tax liability, so the property that the Landlord lived in needs to be sold. As such, the family determined that it would be “appropriate for [R.V.] to move” into the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord’s right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that it meets all of the requirements of Section 52, and I find that it is a valid Notice.

In considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Moreover, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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.

When reviewing the evidence and submissions before me, I note that the Notice was served on July 15, 2022, which would logically suggest that prior to service of the Notice, the intention was for "The child of the landlord or landlord's spouse" to occupy the rental unit. However, R.V. stated that she "wishes to move into" the rental unit now that the Landlord has passed, and that she "need[s] a place to live". As well, she testified that the reason she needed to move into the rental unit was because "who knows what will happen to [the Landlord's] house?" Clearly, these submissions demonstrate uncertainty surrounding the status of the current ownership of the Landlord's home now, and relate to circumstances and decisions that R.V. and F.R.

believe needed to be made after the passing of the Landlord on July 24, 2022. In my view, I find that R.V.'s testimony explicitly implies that there were no considerations, by the Landlord, of having her move into the rental unit prior to when the Notice was served.

Furthermore, I note that R.V. did not make any submissions to explain why the Notice was served on July 15, 2022. There was only one submission that D.B. made regarding a plan to have R.V. move into the rental unit prior to service of the Notice. He claimed that the Notice was served because nurses, that were required to move into the Landlord's home to assist the Landlord, would have subsequently forced R.V. out of the Landlord's home. However, if this were truly the case, I find it curious why R.V. did not provide any testimony that corroborated this specific submission.

Moreover, D.B. did not refute the Tenant's testimony that the same reason of the nurses moving into the Landlord's home was cited for service of the previous Two Month Notice to End Tenancy for Landlord's Use of Property. As well, there was no dispute that the previous Two Month Notice to End Tenancy for Landlord's Use of Property was cancelled because there was no documentary evidence submitted by the Landlord to support the claim that there was a plan in place to have nurses move into the Landlord's home.

In my view, if the second Notice was served on July 15, 2022, because it was the Landlord's intention for R.V. to occupy the rental unit due to nurses that were required to move into the Landlord's home to take care of her, there was sufficient time for documentary evidence to be submitted to corroborate this intention. However, again, no documentary evidence was submitted at all. If this truly was the intention for service of the second Notice, given that the Landlord's side had another opportunity to submit documentary evidence to justify the alleged reason the Notice was served, it is not clear to me why no documentary evidence was submitted to corroborate this reason. Furthermore, I find it suspicious that the second Notice was served so readily after the Decision was rendered to cancel the first Two Month Notice to End Tenancy for Landlord's Use of Property. In conjunction with the inconsistencies, and doubts created above, I find that I am skeptical of the truthfulness of R.V.'s testimony, and I am doubtful of her credibility on the whole.

In addition, I note that all of F.R.'s testimony was in relation to the family's plans to manage the Landlord's multiple properties after the Landlord's unfortunate passing on July 24, 2022. He did not make any submissions that it was the Landlord's intention to

have R.V. use the property prior to when the Notice was served. From his testimony, it was clear that it was only contemplated that R.V. should move into the rental, as a consequence of having to manage the Landlord's multiple properties, after the Landlord's passing. As well, F.R. stated that due to the "large mortgage", they "need to do something", that "everything has gone up", that the Tenant's rent is low, and that the Notice was served due to current financial considerations. Given my doubts above, in conjunction with F.R.'s testimony, I am additionally unconvinced that at the time the Notice was served, that it was served for the intention of "The child of the landlord or landlord's spouse" to move into the rental unit.

Furthermore, I find that this sentiment is echoed in many of D.B.'s submissions where he submitted that the Landlord's home was "a significant tax liability", which required it to be sold, and that as a result of this decision, the family then determined that it would be "appropriate for [R.V.] to move" into the rental unit. It is clearly apparent that R.V. and F.R. were struggling to determine how best to manage the Landlord's properties after the Landlord had passed, even though these assets have not yet passed through probate. From these submissions, it is evident that the reason for moving into the rental unit was only established after the Notice was served. I find that this further causes me to question the credibility and truthfulness of the submissions provided by the Landlord's side during the hearing.

From F.R.'s testimony, it is clear that the main reason they want possession of the rental unit back is because the Tenant's rent is lower than current market value, and this would cause them apparent financial hardship. However, this was evidently established after service of the Notice and after the passing of the Landlord. I reiterate that there is an absence of any documentary evidence to corroborate a conclusion that there was the intention of having R.V. move into the rental prior to when the Notice was served on July 15, 2022. Given this, I find that this also then supports a likely conclusion that if R.V. and F.R. become the owners of the rental unit, they believe they will need possession of the rental unit back because the low rent, and other financial implications, will put them in a precarious financial position.

When reviewing the totality of the evidence before me, I find that it is obvious that R.V. and F.R. now find themselves in a potential uncertain financial position if the properties are passed onto them. Furthermore, it is evident that at the time the Notice was served, there was no intention to have R.V. move into the rental unit, and that their submissions were crafted only after the passing of the Landlord. As such, I am satisfied that this is their obvious attempt at portraying an alternative, false narrative, and that they likely

fabricated a series of events to justify service of the Notice. Ultimately, I find the submissions made are neither compelling nor credible, and as a result, I am not persuaded that at the time the Notice was served, that it was because it was the Landlord's good faith intention for R.V. to occupy the rental unit.

While I concede that it may be R.V.'s intention to live in the rental unit now, after the passing of the Landlord, I do not accept that this would justify service of the Notice for the reason stated on July 15, 2022. I find it important to emphasize that a current desire to use the property for the stated purpose, will not validate a Notice that was served approximately five months earlier. Ultimately, I find that the Notice was not served in good faith. As I am not satisfied that there have been any credible grounds to justify service of the Notice, I find that the Notice of July 15, 2022, is cancelled and of no force and effect.

As an aside, I caution R.V. and F.R. that this now appears to be a second, unsuccessful attempt to end to this tenancy with this type of Notice. As such, it is possible that any future Notice may be seen in the same vein, as it is evident now that there may be motivation to have the rental unit vacant for purely for financial reasons, as opposed to having a legitimate intention to occupy. I note that this is precisely why the good faith requirement of the *Act* exists to prohibit the ending of a tenancy for ulterior motives.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of July 15, 2022, to be cancelled and of no force or effect. This tenancy continues 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: December 21, 2022

Residential Tenancy Branch