



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNL-MT FFT

Introduction

The tenant disputes a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") pursuant to section 49(8) of the *Residential Tenancy Act* (the "Act"). He also seeks to recover the cost of the filing fee pursuant to section 72 of the Act.

The tenant, his daughter (who was inadvertently named as a co-applicant but whose name is now removed from the application), the landlord, and the landlord's interpreter attended the hearing.

Preliminary Issue: Service of Landlord's Evidence

The tenant testified that he served copies of his evidence upon the landlord, and the landlord confirmed receipt of this evidence.

The landlord testified that she served copies of her evidence upon the tenant, but the tenant stated that he did not receive any of her evidence. The landlord testified that she served copies of the evidence in September and October 2022 to the tenant by email. She noted that they have frequently used email to communicate about tenancy matters over the years. The tenant reiterated that he did not receive anything in his email from the landlord and the landlord did not provide any documentary evidence to demonstrate that the evidence was actually received. (For example, a read receipt for the email.)

Rule 3.16 of the *Rules of Procedure* states that

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Documentary evidence must be served in accordance with section 88 of the Act. This section itself does not permit service by email.

However, section 88(j) permits service in accordance with section 43(1) of the *Residential Tenancy Regulation* ("Regulation"). Section 43(1) of the Regulation permits service by email in a very specific manner, namely, that "the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person."

What is not before me is a copy of any document setting out the tenant's declaration or statement that his email address was ever provided as an address for service by the tenant. While the parties may have communicated about residential tenancy matters over the years by email and text, there is nothing in writing verifying that the tenant's email address can be used as a method for service of legal documents under the Act.

Given the above it is my finding that the landlord's evidence was not served in accordance with the *Rules of Procedure* or the Act and as such I will neither admit nor consider this documentary evidence. Only the landlord's sworn testimony shall be considered as evidence in this matter.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began sometime in 2017 and monthly rent is \$1,300.00. The rental unit is a basement suite, one of two, in a residential single-family dwelling in White Rock. There are copies of a few written tenancy agreements in evidence.

On July 16, 2022 the landlord issued the Notice to the tenant. It is noted that there are two versions of the Notice: one was signed on July 16 and the other was signed on July 22. The only substantive difference between the two is that the tenant's daughter's name appears on the latter of the two notices; "Notice" in this decision shall mean both versions of the Notice that were issued.

The landlord testified under oath that her husband has cancer, and they need their family to come from China. The landlord's intention is to have her family—the landlord's husband's eldest daughter and others—occupy in the rental unit. They hope to have the family living there to assist with caring for her husband.

The landlord reiterated a few times during the hearing that she and the tenant have otherwise enjoyed a good landlord-tenant relationship over the past 5½ years. They have provided the rental unit at very low rent, and they have never raised the rent over the years. She reiterated that the reason for giving the Notice is so that their whole family can live in the property and in the rental unit.

The tenant testified under oath that “about a year ago” the landlord sent him a text message which spoke to the landlord being able to rent the property for a higher rent. A copy of text message dated August 12, 2021 was in evidence. In the message the landlord speaks of the then-recent cancer diagnosis and the financial difficulties that the family was experiencing. She references that rent for a similar two-bedroom rental unit would be in the \$1,600—\$2,000 range (the rent at the time was \$1,250). There are additional text messages between the parties in which the landlord speaks of the financial strain caused by the amount of the rent.

The tenant argued that he believes the landlord issued the Notice is to re-rent the property for more rent. He said that “because I didn't bow down to [the landlord] we got this Notice.”

It is noted that the rental unit is one of two basement suites in the property. The basement suite adjacent to the rental unit has sat vacant since December 2021.

Analysis

Where an applicant tenant disputes a notice to end tenancy, the onus falls on the respondent landlord to prove the grounds for ending the tenancy.

The Notice was given under section 49(3) of the Act on the basis that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. This is the reason as stated on page two of the Notice.

The tenant disputes that the Notice was given in good faith. Rather, he argues that it was issued for the purpose of evicting the tenant so that the landlord can rent the rental unit for a higher rent.

“Good faith” is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy.

And, to reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

In this case, the landlord’s husband’s cancer has been an issue since August 2021. It is not a new thing, and there is nothing in evidence for me to find that this has changed such that additional family members are now required to reside in the rental unit to assist. What is more likely than not is that the landlord has suffered financial hardship from not earning what she would like in rent. The communication between the parties clearly shows that the landlord would like the tenant to pay much higher rent that he is currently paying.

In the absence of something more definitive it is my finding that the landlord more likely than not intends to rent out the rental unit for higher rent. Indeed, if the landlord wanted her family to move into the property, then there is no reason before me to find that they could not occupy the adjacent empty rental unit. That rental unit has sat empty since December 2021.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not established that the Notice was issued in good faith. Accordingly, the Notice is hereby cancelled effective immediately. The tenancy shall continue until it is ended in accordance with the Act.

In this dispute, as the tenant was successful, he is entitled to recoup the cost of the application filing fee. Pursuant to section 72(2)(a) of the Act the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment.

Conclusion

IT IS HEREBY ORDERED THAT:

1. the tenant's application be granted.
2. the *Two Month Notice to End Tenancy for Landlord's Use of Property* is cancelled.
3. \$100.00 is awarded to the tenant for the cost of the filing fee and he is to deduct \$100.00 from a future rent payment.

This decision is made on authority delegated under section 9.1(1) of the Act.

Dated: December 13, 2022

Residential Tenancy Branch