



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed September 28, 2022, wherein the Tenant sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, issued on September 26, 2022 (the "Notice") as well as recovery of the filing fee.

The hearing of the Tenants' application was scheduled for 9:30 a.m. on November 4, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord also had a witness, Z.L., available to testify, although it was unnecessary that I hear from the Landlord.

As I was concerned the Landlord was having difficulty understanding me and the proceedings, I offered the Landlord an opportunity to adjourn the matter to permit her to bring an interpreter. She declined my offer of an adjournment and confirmed she understood what I was saying and the nature of the hearing.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties'

respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Application concluded on November 4, 2022. This Decision was rendered on December 9, 2022. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recovery the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant in the case before me, the Landlord presented their evidence first.

The Landlord testified that the tenancy began November 1, 2020. The Tenant signed a second tenancy agreement on November 1, 2021 for a fixed term to October 31, 2022. Monthly rent is \$1,600.00 per month, payable on the 1st of the month. The Tenant also paid a security deposit in the amount of \$800.00.

The Landlord issued the Notice on September 26, 2022. The effective date of the Notice was November 30, 2022. The Landlord testified that she served it by putting it on the door on September 26, 2022 as well as sending a registered letter to the rental unit as well as regular mail. She also confirmed that she served all three pages on the Tenant.

The reasons cited on the Notice were that Landlord and her family intend to occupy the rental unit. The Landlord testified that she lives in a home she owns with her family (husband and two children) in the same community and that the current home is listed for sale. The Landlord stated that she wants to sell her home and move into the rental unit because her family is having financial difficulty. She also stated that her husband and she are not able to cover the rental property and pay for her son's university.

The Landlord stated that they thought about selling the apartment, but the Tenant did not want her to have any open houses or bring in any potential buyers. When the Tenant didn't facilitate listing the apartment, they decided to sell their current home and move into the rental unit.

The Landlord testified that they signed a contract with the realtor on September 26, 2022, and the property has been listed since October 1, 2022. The Landlord stated that the house is "pretty old" and has many problems and will likely sell for just the value of the land, not the home.

The Landlord stated there are four bedrooms in her current home. She confirmed that the rental unit is only 840 square feet and that there is only one bedroom and one den in the rental unit. She claimed that her children would share a room. She further stated that she and her family lived in the rental unit for three years before they moved into their current home.

The Landlord stated that the reason they are moving into the rental unit is because they are selling their home. She also stated that their current home has many problems which she claimed are too expensive to fix, including mould. She had a mould inspection done in September but claims she did not receive it until October 28, 2022, shortly before the hearing. The report informed her that the condition is serious as they found mould in several places including the bathroom, the kitchen and the entry which she characterized as poisonous mould. The inspector suggested they have the house thoroughly cleaned and fogged, which the Landlord said was too time consuming and costly. She stated that she would have had money to do this work if she could sell the apartment, but because the Tenant wouldn't let her sell it such that now she has no money to do the repairs.

The Landlord claimed that she has no choice but to move into the rental property as they can't live in their current home and can't afford to fix it. She confirmed they have no other property.

The Landlord testified that she is a stay at home parent and her husband works at a coffee shop. Her daughter is 13 years old and her son is 10 years old. Her oldest is 18 years old and attends university.

The Landlord stated that she thinks the Tenant is not even living in the rental property, but rather someone else is living here. She stated that the registered letter she sent was returned as unclaimed. Also her husband and the witness tried to serve the Tenant, a stranger answered the door and said he had an agreement with the Tenant, and that he was living there.

In response to the Landlord's testimony the Tenant testified as follows. The Tenant stated that he did not sublet his apartment to anyone. He stated that it is possible his girlfriend's brother spoke to the Landlord as he was staying there for a few weeks, but that he had not sublet his rental unit.

In terms of the Notice, the Tenant stated that the Landlord asked him to agree to a rent increase to \$1,700.00 and as soon as he didn't agree to the increase in rent she listed her house for sale. The Tenant provided a copy of this letter in evidence before me (which was written in a different language and which he confirmed the contents) to confirm that the Landlord asked to raise the rent shortly before listing her home.

The Tenant also noted that the Landlord listed her house for 3.4 million dollars, which is significantly more than market value and is an indication she does not really intend to sell. He stated that better homes in the neighbourhood are listed for 2.5 million and are in better shape. The Tenant also stated that he does not believe the Landlord will move into the rental unit as it is simply too small for her family.

In reply the Landlord stated that the home is listed for 3.38 million dollars. She confirmed that the B.C. Assessment value of the home is \$1,855,900.00. The Landlord stated that they listed the home for this price because the home is located on the main road in a large suburb of Vancouver and their real estate agent told the Landlord that if they use the correct strategy they could rezone the land and attract neighbours to list their homes and allow for rezoning.

The Landlord confirmed that they have a \$550,000.00 mortgage on their current home.

The Landlord stated that they do not intend to use the sale proceeds to purchase another home as her husband was looking for work in another province and she is trying to find part time work.

Analysis

Ending a tenancy is a significant request and may only be done so in accordance with the *Residential Tenancy Act*. In this case the Landlord seeks to end the tenancy pursuant to section 49, claiming they intend to reside in the rental unit.

Section 49(8)(a) of the *Act* permits a Tenant to dispute a 2 Month Notice to End Tenancy for Landlord's Use within 15 days of receiving the Notice. When a Tenant disputes such a Notice the burden of proof, or onus, shifts to the Landlord to justify, on a balance of probabilities, the reasons for issuing such a Notice.

Residential Tenancy Policy Guideline 2A—Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member provides as follows:

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.

In this case I find the Landlord has not met the burden of establishing that the Notice was issued in good faith with no dishonest or ulterior motive for ending the tenancy.

I find there is evidence that the Landlord issued the Notice in response to the Tenant's refusal to pay the requested rent increase. I am persuaded by the Tenant's testimony

and submissions that the letter sent to the Tenant requesting such a rent increase immediately precipitated the issuance of the Notice.

Further, the Landlord testified that she had hoped to sell the rental unit, but the Tenant did not facilitate her sale efforts. Again, I find it likely she issued the Notice in response to her perception that the Tenant was getting in the way of her efforts to sell the rental unit.

I also do not accept the Landlord's testimony that she intends to reside in the rental unit. I do not accept the Landlord's testimony that she and her family of five intend to live in the one bedroom rental unit. I agree with the Tenant that it is unlikely a family of this size would comfortably live in such a space, even if they had done so in the past.

I also do not find the Landlord honestly intends to sell her current home. The Landlord has listed her home for nearly double the assessed value at a time when housing prices are plummeting in B.C. I do not accept this is an honest intention. Even if the Landlord were to sell the property for the asking price, she would have over 2.5 million dollars in net sale proceeds from which to purchase another home. I find it highly unlikely that she would move into the rental unit when such funds are at her disposal and I simply do not accept her testimony in this respect.

For all these reasons I do not find the Landlord's reasons for issuing the Notice to be sufficiently compelling and on balance, I find the Landlord did not issue the Notice in good faith. I therefore grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

As the Tenant has been successful in this Application I also grant his request to recover the filing fee. The Tenant may reduce his next months' rent by \$100.00 as compensation for this amount.

Conclusion

The Tenant's request to cancel the Notice is granted. The Tenant may reduce their next months' rent by \$100.00 to recover the 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 9, 2022

Residential Tenancy Branch