



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "4 Month Notice") pursuant to Sections 49(6) 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 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.

Preliminary Matter

A Two Month Notice to End Tenancy For Landlord's Use of Property (the "Two Month Notice") was served, but the Landlord gave the Tenant four months to vacate. The Tenants applied to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use. I find the Tenants' application should correctly have been to cancel the Two Month Notice, and I amend the application for dispute resolution to reflect this change pursuant to Section 64(3)(c) of the Act.

The Landlord served the Two Month Notice on the Tenants on October 26, 2022 by placing the document in their mailbox. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was deemed served on the Tenants on October 29, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on November 14, 2022 (the “NoDRP package”). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the NoDRP package on November 14, 2022, in accordance with Section 89(1)(a) of the Act.

The Tenants personally served their usb evidence to the Landlord on November 15, 2022. The Landlord confirmed receipt of the usb evidence, and that he was able to view the usb contents. I find that the Tenants’ evidence was served on the Landlord on November 15, 2022 pursuant to Section 88(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Two Months Notice?
2. If the Tenants are not successful, is the Landlord 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 presented to 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 oral periodic tenancy began around 17 years ago (~2005). The current Landlord purchased the residential property in 2010 and the current Tenants already resided in the rental unit. Monthly rent is \$850.00 payable on the first day of each month. The Tenants paid a security deposit around \$300.00 or \$325.00 at the start of the tenancy. The Tenants remember hearing from the previous Landlord that the new Landlord now has their security deposit.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was February 28, 2023.

The Landlord testified that his wife lives in a different city than the Landlord. He stated due to life circumstances, they have decided to live together. The Landlord's spouse owned a hair salon in the other city, and she wants to do her work from home. The Landlord said their plans for the space are that him and his wife plan to have children, although they are not pregnant. The plan for the space is for his family and for his wife's business. The Landlord owns the residential property with his brother. The Landlord did not have any witnesses providing evidence in support of these claims.

The Tenants' testified that the Landlord told them he needed to make more money using his house. The Tenants said, the Landlord goes over to the other city where his wife is, and he rented out the Landlord's house to some people to run a kennel. The kennel operation had six dogs that were kept in the house. The dogs barked, or when the people left who were running the kennel, the dogs would whimper. They made a fenced off area in the front of the house where the dogs would urinate or defecate. This kennel operation was in place for about six weeks. The Tenants did not like this situation, so they explored other housing options.

The Tenants stated they looked for places to put a mobile home, but ultimately the Tenants did not find a mobile home park that worked for them. Then the Tenants explored the option of living on a boat, but this plan was not successful, so was abandoned.

The Tenants shared that the Landlord told them that he had rented out their suite to some people who would be coming down from another city. The Tenants said *"a couple days later, he came to me and said if you pay what they're going to pay, you can stay. I asked him, I said, how much were they going to pay? And he said, \$1,700.00. I don't think so, I'll have to talk to [female Tenant] about that."* The Tenants talked about this increase and did not agree to it. They told the Landlord this, and he counter offered at \$1,500.00, then later at \$1,300.00. Again, the Tenants did not agree to this rent increase.

The Tenants uploaded a video conversation between him and the Landlord, and he refers to timestamps of the conversation where the Tenants say they are not paying an additional \$500.00 (this is the new rent amount increase, if the Tenants agreed to a rent

increase to \$1,300.00), and the Landlord says it's \$450.00. The Tenants submit that this is proof that the Landlord does not have the good intention to reside in the rental unit because *"he is willing to let us stay there if we paid more money."*

A second uploaded video clip, another conversation between the male Tenant and the Landlord, at 10 seconds, the Landlord said he does not want to rent anymore, and the male Tenant replied that that it is not a legal reason to evict someone. At 17 seconds, the Landlord stated he could take it back for a family to live in. At the 1:12 time stamp of the conversation, the Tenant said the Landlord told him, *"I'm actually not legally allowed to rent it out until six months after I leave. Which again he's referring to that he's not even use it for a family thing, he's just going to wait six months and rent it out again."* At the end of the conversation, the male Tenant testified that the Landlord denied saying there was a conversation about rent increases.

The Landlord clarified that his friend was dog sitting in the house and she was working with the dogs on correcting their behaviours. She is no longer there. The Landlord said his brother, sister-in-law and their two children live in the basement suite or lower part of the main house. The Landlord described that there is a wall off his kitchen which divides the main house and the Tenants' rental unit. The Landlord testified that he wants to separate his brother's lower space and his upper space and make it two independent units for their two families. The Landlord said he has work to do on his upper space to make it workable for him and his wife, which includes incorporating the 600 or 700 square feet of the rental unit.

The Landlord said the male Tenant contrived the whole conversation that is on the video clips. The Tenant said the video camera was set up for security purposes to watch their boat. The Landlord confirmed that the main house is large, but he is not wanting more rent money, he just wants the tenancy to come to an end.

The Tenants are still looking for a new place to rent, but the rental market is quite high. They plan on staying until they find a place that is acceptable to them.

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. It reads:

Landlord's notice: landlord's use of property

49 (1) *In this section:*

...

"landlord" means

- (a) *for the purposes of subsection (3), an individual who*
 - (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, and*

...

(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*

...

(3) *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord 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 deemed served with the Two Month Notice on October 29, 2022. I find the Two Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on October 30, 2022 within the 15 days after receipt of the Two Month Notice.

The Tenant made a claim that they 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 Tenants' evidence included conversations with the Landlord about rent increases, or if the Tenants paid more rent, they could remain in the rental unit. The Landlord said these conversations were all contrived by the male Tenant; however, I find the Landlord is knowledgeable about the Act that he cannot rent the unit until he has lived in the rental unit for six months.

The Landlord's evidence is that he wants the Tenants' rental unit space which he will incorporate into the main part of the house. He stated he needs the space for his wife's hair salon work and for their future children. The Landlord and his wife are not pregnant. The Landlord and the Landlord's brother own the residential property together. The Landlord said the house is large, but the Landlord has not provided concrete plans of his intention to take over the rental unit. It is not lost on me that perhaps the Landlord has the genuine intention to take back the rental unit for landlord's use; however, without any supporting evidence, I am not persuaded that the tenancy needs to end at this time. It is the Landlord's onus to prove on a balance of probabilities that he has the honesty of intention to do what he says he wants to do. I have no corroborating evidence for the Landlord about his plans for the house.

Based on the totality of the evidence from both parties, I find that the Landlord has not met his burden proving his honesty of intention on a balance of probabilities, and I cancel the 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 next month's rent due to the Landlord.

Conclusion

The Tenants' application is granted, the Two Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

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: January 04, 2023

Residential Tenancy Branch