



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on October 7, 2022, wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy issued on September 27, 2022 (the "Notice").

The hearing of the Tenant's Application was conducted by teleconference at 11:00 a.m. on December 16, 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 Tenant called in, as did the Tenant's advocate, C.D., C.D.'s Co-worker, H.R., and S.K. the supervising lawyer. The Landlord call in, as did his daughter S.K.

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 Tenant's Application concluded on December 16, 2022. This Decision was rendered on January 23, 2023. 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.

Issue to be Decided

Should the Notice be cancelled?

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, the Landlord presented their evidence first.

The Landlord's daughter, S.G., testified as follows. She stated that she was not aware when the tenancy began but agreed the Tenant has been in the rental unit for some years, and at least since the Landlord bought the property four years ago. The Landlord, S.G., and G.G., live upstairs. S.G. stated that the Tenant occupies a 1 bedroom basement suite.

A copy of the Notice was provided in evidence before me, and which indicates that the Landlord's reason for issuing the Notice were that the Landlord's child would be occupying the rental unit. S.G. stated that it is the Landlord's 27 year old son, G.G., who intends to move into the rental unit. S.G. stated that G.G. moved out of the family residence for approximately a year and has recently moved back in.

S.G. stated that G.G. wants to move into the basement suite with his dog and his girlfriend. S.G. stated that they have both grandparents living upstairs, and three adult daughters. She confirmed that G.G.'s girlfriend does not, at present live in the upstairs as she is waiting to move into the basement suite.

S.G. confirmed that the previous 2 Month Notice to End Tenancy, which was the subject matter of the September 16, 2022 hearing, also dealt with the Landlord's request to have the tenancy end for her family to occupy the rental unit. However, as neither party submitted a copy of the notice into evidence the merits of the notice were not considered by the Arbitrator. The file number for that matter is included on the unpublished cover page of this my Decision.

S.G. stated that there is a second basement suite in the family home, a 2 bedroom suite, that is currently rented out. S.G. further stated that they did not issue a notice to end tenancy for the 2 bedroom suite as G.G. does not need 2 bedrooms and only wants the 1 bedroom.

On the Application the Tenant indicated the tenancy began April 1, 2010. Monthly rent is \$750.00 and the Tenant paid a \$250.00 security deposit. At the time of the hearing the tenancy had been ongoing for more than 12 years.

In reply to the Landlord's testimony, the Tenant, testified as follows. He stated that he was informed by the Landlord that it was the Landlord's daughter was going to move into the rental unit, yet at the hearing the Landlord's daughter testified that it is the son who wants to live there. He stated this was the first time he had heard it was the Landlord's *son*.

He further stated that it is his understanding that the renters in the two bedroom rental unit are intending to move into his rental unit, not the Landlord's son. He confirmed that he was aware of this because the woman who was supposed to move into the rental unit was very upset and was crying when the Tenant applied to dispute the Notice.

The Tenant suggested that the reason the Landlord issued the Notice is because he only pays \$750.00 per month and the Landlord knows that she can get \$1,200.00 - \$1,300.00 for the rental unit. The Tenant further stated that the Landlord asks him regularly when he is going to move out because she knows that he has trouble with the stairs, and she wants to rent the unit for more money to another tenant.

The Tenant's advocate C.D. provided submissions on behalf of the Tenant. He submitted that the son, G.G., should have been on the call to give testimony as to his intentions. He also noted that the rental unit is a small studio apartment and is not big enough for the Landlord's son, his girlfriend, and their dog. C.D. noted that the two

bedroom suite is more appropriate for G.G., and although it is currently rented out to third parties, it could be used by the Landlord's family.

C.D. also stated that at no time, save and except for at the hearing, did they inform the Tenant that it was the son, G.G., who would be moving in, as at all material times they said it was going to be the daughter.

C.D. submitted that what is actually going on is that the Landlord simply wants to re-rent the unit for more money.

C.D. also submitted that the Landlord informed him that the Landlord's other family members were coming from another country to live in the rental unit. This is confirmed in the letter provided by the Landlord, titled "Letter of Explanation".

C.D. also stated that the Landlord has four bedrooms upstairs, and a bedroom downstairs, as well as a two bedroom unit, which is more than enough space for their entire family without having to displace the Tenant.

In reply, S.G., testified that the people living in the two bedroom unit are a family that are not related to the Landlord, but they are a family of four. S.G. stated that at no time did the Landlord promise this family that they could move into the one bedroom suite.

S.G. further testified that when they began talking about this in May they decided that the one bedroom basement suite was sufficient for their family, and they did not need to evict the Tenants in the two bedroom unit. The Tenants in the two bedroom unit pay \$1,300.00 in rent and they moved in in 2018.

Analysis

A tenancy may only be ended in accordance with the *Act*. Ending a tenancy is a significant request and the Landlord bears the burden of proving the tenancy should end for the reasons cited on the Notice.

In this case the Landlord issued the Notice pursuant to section 49 of the *Act* which reads as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

"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

(b) for the purposes of subsection (4), a family corporation that

- (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;

...

(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
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

On the Notice the Landlord informed the Tenant that he wished to have his children reside in the rental unit.

In a document titled “Letter of Description”, which was filed in evidence by the Landlord, the Landlord wrote as follows:

I have an adult son and two adult daughters living with me who are seeking their own independent spaces in the home.

Additionally, I will be expecting family members who are travelling from abroad to stay with me for extended periods of time over the new year.

While I might be uncertain of which child of mine would like to move downstairs, that is dependent on the state of the suite, and which child truly likes it for themselves. The main factor for needing the space back on my property is so that I have a place to provide for my children to use.

A Landlord who issues a 2 Month Notice to End Tenancy must have a good faith intention to occupy the rental unit and must not issue the rental unit for an ulterior motive. *Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides in part as follows:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) 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: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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 and MHPTA 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 (s.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 suggest the landlord is not acting in good faith in a present case.

If there are comparable 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 other ulterior motive.

In this case the Tenant notes that he occupies a small studio apartment. While the Landlord's "Letter of Description" was uncertain, at the hearing the Landlord's daughter stated that it was the Landlord's purported intention is to have his son, his son's girlfriend, and their dog move into the studio apartment. The Tenant submits this is not their intention as his rental unit is too small for the intended occupants. This was not disputed by the Landlord, save and except for their reiteration that the son prefers the studio apartment to the other 2 bedroom rental unit.

The Tenant submits that initially the Landlord claimed the unit would be occupied by the Landlord's daughter. At the hearing before me the Landlord claimed it was his son who would be residing in the unit. The Landlord's son did not testify at the hearing before me. As such he was not available to answer questions as to his intentions with respect to the rental unit.

The Landlord's "Letter of Explanation" also suggests that the Landlord may wish to use the rental unit for family members from abroad who may be visiting from time to time. This suggests the Landlord may be ending the tenancy to accommodate family members who do not meet the definition of "close family member" as provided for in section 49.

On balance, I find this suggests at inconsistent plan at best, and an insincere plan at worse, for the rental unit as it seems the Landlord is simply looking for any way to end the tenancy.

The Tenant testified that he has been in the rental unit for 12 years. As a result of this long term tenancy, his rent is economically priced at \$750.00 per month. The Tenant submitted that the unit would fetch as much as \$1,300.00 per month. The Landlord did not dispute this.

On balance I am not satisfied the Landlord has met the burden of proving he wishes to end the tenancy for the purpose stated on the Notice. I therefore grant the Tenant's request to cancel the Notice.

Conclusion

The Tenant's Application is granted. The tenancy shall continue 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: January 23, 2023

Residential Tenancy Branch