



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 24, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in October of 2022 was sent to the Landlord, via registered mail, at the service address noted on the Application. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 14, 2022 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, in November of 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In December of 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant, via registered mail, on December 12, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord's name.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- they entered into a written tenancy agreement after the Landlord purchased the residential complex;
- the tenancy between these individuals began on October 01, 2020;
- the Tenant was living in the rental it prior to it being purchased by the Landlord;
- the rental unit is in a four-plex, which has two upper suites and two lower suites;
- the Landlord owns the entire residential complex;
- there is one bedroom and one bathroom in the Tenant's rental unit;
- the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use on September 30, 2022; and
- the Two Month Notice to End Tenancy for Landlord's Use declares that the rental unit must be vacated by December 01, 2022 because it will be occupied by the Landlord's parents or child.

The Landlord stated that:

- on June 01, 2022 a Two Month Notice to End Tenancy for Landlord's Use was served to the occupants of the lower suite that has a street address ending with

844A and the occupant of that suite was subsequently served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;

- 844A was vacated by August 01, 2022;
- on June 01, 2022 a Two Month Notice to End Tenancy for Landlord's Use was served to the occupants of the upper suite that has a street address ending with 844 and the occupant of that suite was subsequently served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- 844 was vacated by August 01, 2022;
- in late October of 2022 their son and his wife moved into the upper and lower suite of 844;
- their son and his wife delayed moving into 844 because the unit needed a significant amount of cleaning;
- 844A and 844 are connected with stairs and doors;
- when the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant, her parents were planning on moving into the Tenant's rental unit and into the suite above it, which are connected by doors/stairs;
- her parents still intend to move into the rental unit and the one above it;
- a second son may move into the rental unit with her parents; and
- on September 30, 2022 the people living in the suite above this rental unit were also served with a Two Month Notice to End Tenancy for Landlord's Use which declares that the rental unit must be vacated because it will be occupied by the Landlord's parents or child.

The male Landlord stated that if their second son moves into the rental unit and the suite above it, their son will reside with the Landlord's parents.

The Tenant stated that:

- based on where the Landlord's son parks his vehicle and the door he uses to enter 844A, she believes that he is only occupying the lower suite at that address;
- she stated that whenever she knocks on the door of 844, the son answers the door leading into the lower suite;
- she never sees lights on in the upper suite of 844; and
- she does not believe anyone is living in the upper suite of 844.

The Tenant stated that in early August she observed many people viewing the upper suite of 844 and she suspects they were viewing it for the purpose of renting it. The

male Landlord stated that the people observed in the upper suite in August of 2022 were tradespeople assessing the condition of the house after it was vacated.

The male Landlord stated that the Landlord's parents cannot move into 844 with their son and his wife, because their parents have a lot of property and they would be sharing the space with two people, rather than just one son.

When the Advocate for the Tenant asked why the Landlord's parents cannot move into the Landlord's home with 5 bedrooms, the male Landlord stated that there are stairs in their home and the parents are elderly.

When the Advocate for the Tenant noted that there are stairs between the rental unit and the suite above it, the male Landlord stated that the parents "may" occupy the rental unit and they will "assess the situation".

When the Advocate for the Tenant asked why their son cannot move into the Landlord's home with 5 bedrooms, the male Landlord stated that the son is 21 and he does not want to live with his parents.

The Landlord submitted an invoice from a commonly used internet provider in the name of her son, which gives the mailing address of 844. This invoice does not declare whether the son lives in the upper or lower suite of 844. The Advocate for the Tenant stated that when his neighbour lived in a suite in 844, his invoice from the same internet provider did not declare which suite he lived in.

The Landlord stated that the upper and lower suites in 844 have a total of 5 bedrooms. The Advocate for the Tenant stated that the upper and lower suites in 844 have a total of 5 bedrooms and a den.

The Landlord stated that the people living in the suite above the rental unit have also disputed the Two Month Notice to End Tenancy for Landlord's Use, and that matter is scheduled to be heard on February 13, 2022.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* permits a landlord who is an individual to 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. A close family

member, as defined by the *Act*, includes the parent of a landlord or landlord's spouse and a child of a landlord or landlord's spouse.

On the basis of the undisputed evidence, I find that on September 30, 2022 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, which served as proper notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*. In the Two Month Notice to End Tenancy for Landlord's Use I find that the Landlord informed the Tenant that the rental unit would be occupied by the Landlord's parents AND the Landlord's son.

On the basis of the Two Month Notice to End Tenancy for Landlord's Use served to the Tenant, I find that the Landlord bears the burden of proving that the Landlord's parents and their child intend, in good faith, to occupy the rental unit. I find that the Landlord has submitted insufficient evidence to establish that the Landlord's parents and the Landlord's child intend to move into the rental unit.

In reaching this conclusion I was heavily influenced by the absence of evidence from the Landlord's parents to corroborate the Landlord's submission that her parents intend to move into the rental unit. When a landlord ends a tenancy because a parent wishes to move into the rental unit, I find it reasonable to expect some evidence, either verbal or written, from the parent(s) intending to move into the rental unit. In the absence of such evidence, I cannot conclude that the Landlord's parents intend to move into the unit.

In reaching this conclusion I was further influenced by the absence of evidence from the Landlord's son that establishes he intends to move into the rental unit. When a landlord ends a tenancy because a child wishes to move into the rental unit, I find it reasonable to expect some evidence, either verbal or written, from the child intending to move into the rental unit. In the absence of such evidence, I cannot conclude that the Landlord's child intends to move into the unit.

In reaching this conclusion I was further influenced by the fact neither the male nor female Landlord definitively stated that their son intends to move into the rental unit. Rather, the female Landlord stated that her son "**may**" move into the rental unit and the male Landlord stated that "**if**" their second son moves into the rental unit and the suite above it, their son will reside with the Landlord's parents. This testimony, in my view, suggests that the son has no clear intention of moving into the rental unit, in which case the landlord did not have the right to end the tenancy pursuant to section 49(3) of the

Act. Section 49(3) does not permit a landlord to end a tenancy because their child “might” move into the unit.

In reaching this conclusion I was further influenced by the male Landlord’s testimony in which he declared the Landlord’s parents could not live with the Landlord, in part, because there are stairs in the Landlord’s home. The Landlord’s submission is that the parents will live in both the rental unit (lower suite) and the suite above it, which are connected by stairs. When the Advocate for the Tenant noted that there are stairs between the rental unit and the suite above it, the male Landlord stated that the parents “may” occupy the rental unit (lower suite) and they will “assess the situation”.

I find that the male Landlord’s testimony that the parents “may” occupy the rental unit (lower suite) and that they will “assess the situation” suggests that there is not yet a clear plan of how the parents will occupy the rental unit and the suite above. In the absence of a clear plan, I cannot conclude that the Landlord has the right to end this tenancy because the Landlord’s parents wish to occupy the rental unit.

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 *Act* or the tenancy agreement.

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.

The Tenant has raised the issue of good faith and, as such, the Landlord has the burden of proving the Two Month Notice to End Tenancy for Landlord's Use was served in good faith.

Residential Tenancy Branch Policy Guideline 2A suggests that if the 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 demonstrate the landlord is not acting in good faith in a present case.

On the basis of the undisputed evidence, I find that a Two Month Notice to End Tenancy for Landlord's Use was served to the occupant of 844A and 844 and that those occupants vacated those suites. On the basis of the undisputed evidence, I find that the Landlord's son and his wife are currently living in unit 844A.

I find that there is insufficient evidence to establish that the Landlord's son and wife are also living in the upper suite in unit 844. I find that the observations of the Tenant suggest that they are not. Conversely, I find that the Landlord submitted no evidence to prove that the Landlord's son and wife and son are occupying the upper suite in 844. Given that the Tenant has clearly raised this issue in her hearing documents, I find that the Landlord should have provided some evidence, such as photographs, to show the son was living in the upper suite.

As the Landlord has failed to establish that the Landlord's son is living in the upper suite of 844 after that tenancy was ended pursuant to section 49(3) of the *Act*, I find it is possible that the Two Month Notice to End Tenancy for Landlord's Use that was served in these circumstances was not served in good faith.

In adjudicating this matter, I have placed little weight on the letter from the Landlord's son who declares he has been living at 844 since October of 2022. As this letter does not declare that he is living in both the upper and lower unit, I find that it has little evidentiary value.

In adjudicating this matter, I have placed little weight on the address on invoice for internet service which shows the Landlord's son lives at 844. As this invoice does not declare that he is living in both the upper and lower unit, it does not establish that he is living in both suites.

I note that the invoice for internet service shows that the address change will occur on December 05, 2022. Although it is possible that the Landlord's son lived in the rental unit without internet service for over one month, it is also possible that the internet service was put in the son's name merely to support the assertion that the son had moved into the rental unit. While I accept that it may be merely coincidental, I also note that the date of the address change was the date before this evidence was submitted to the Residential Tenancy Branch.

For these reasons I find that the Landlord has failed to establish that they have grounds to end this tenancy for the reasons cited in the Two Month Notice to End Tenancy for

Landlord's Use and that the Notice to End Tenancy was served in good faith. I therefore grant the Tenant's application to set aside this Two Month Notice to End Tenancy for Landlord's Use.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The application to set aside this Two Month Notice to End Tenancy for Landlord's Use is granted. This tenancy shall continue until it is ended in accordance with the *Act*.

I grant the Tenant a monetary Order for \$100.00 in compensation for the filing fee paid for this Application for Dispute Resolution. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce the monetary Order, the Tenant has the right to withhold \$100.00 from one monthly rent payment, pursuant to section 72(2) of 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 15, 2023

Residential Tenancy Branch