



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, RR, FFT

Introduction

On September 11, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 29, 2022. The Tenant also applied for an order for the Landlord to make repairs to the unit and for a reduction in rent for repairs, services or facilities agreed upon but not provided.

On October 21, 2022, the Tenant amended the application to include a dispute of a Two Month Notice to End Tenancy for Landlord’s Use of Property served on October 17, 2022.

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing. The Landlord was assisted by an agent.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

The Landlords agent (“the Landlord”) testified that the Landlord did not send a copy of their documentary evidence to the Tenant prior to the hearing. Since the Tenant did not have an opportunity to consider and respond to the Landlord’s evidence, the Landlord’s evidence will not be considered and is excluded.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the Landlord has sufficient reason to end the tenancy. The remainder of the Tenant's claims for repairs and a rent reduction are dismissed with leave to reapply.

Issues to be Decided

- Does the Landlord have a good faith intention to end the tenancy to allow a close family member to move into the rental unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Tenant testified that her tenancy began in June 2015. The Landlord purchased the rental unit in September 2019 and inherited the Tenant and the terms of her tenancy. Currently, rent in the amount of \$2,525.58 is due to be paid to the Landlord by the first day of each month.

The Landlord issued two notices to end tenancy to the Tenant. A Two Month Notice to End Tenancy for Landlord's Use of Property dated August 29, 2022, and a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 17, 2022. The reason for ending the tenancy cited within the August Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The Landlord or the Landlord's spouse.

The reason for ending the tenancy cited within the October Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The child of the Landlord or Landlord's spouse.

The effective date (the date the Tenant must move out of the rental unit) on the August Two Month Notice is October 31, 2022, and is December 31, 2022, on the October 2022 Two Month Notice.

The Two Month Notices provide information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute it within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenant disputed the August Two Month Notice on September 11, 2022, and disputed the October Two Month Notice on October 21, 2022; both Notices were disputed within the required time period.

The Landlord provided testimony on the reasons why they want to end the tenancy. The Landlord testified that the August Two Month Notice was issued because the Landlords were fighting a lot and the female Landlord wanted to have a separation and live in the rental unit. The Landlord testified that they own a house and also own two condos that are rental units. The Landlord testified that one of the rental units was sold in July 2022.

The Landlord testified that they changed their mind about occupying the rental unit and decided to allow their son to move into the unit. The Landlord then issued the October Two Month Notice to the Tenant. The Landlord testified that their son lives in Manitoba and has recently quit his job and needs a place to live.

The Landlord's son was not present to provide direct testimony and there is no documentary evidence from the Landlord.

In reply, the Tenant testified that in March of 2022 she reported an issue with the dishwasher to the Landlord. The Landlord's agent attended the unit to look at the dishwasher and informed her that the Landlord is considering selling the rental unit. The Tenant did not pursue the matter with the dishwasher because she thought that doing so would put the tenancy at risk. She testified that the dishwasher was repaired by the Landlord soon after she applied for this dispute resolution hearing.

The Tenant testified that she considered accepting the August Two Month Notice and proposed that she would move out if the Landlord gave her two months of free rent. She testified that the Landlord responded by agreeing to two months of free rent; however she was informed that she would have to give up her rights to apply for 12 months of compensation if the Landlord failed to follow through with the purpose of the Two Month Notice. The Tenant testified that she did not agree to the Landlord's

proposal and the Landlord's request made her question whether the Landlord issued the Two Month Notice in good faith. The Tenant received the October Two Month Notice testified that she does not believe that the Landlord's son will be moving across the country to live in the rental unit.

The Landlord's son was not present to provide direct testimony on his intentions and there is no documentary evidence from the Landlord.

In reply, the Landlord testified that they ordered a part for the repair of the dishwasher and that it simply took time to repair the dishwasher.

The Landlord stated that they have no intention to re-rent the unit.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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)).

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit. The October Two Month Notice indicates the rental unit will be occupied by the child of the Landlord or Landlord's spouse.

The Landlord bears the burden to prove that they intend to accomplish the stated purpose of the Notice. I find it odd that the Landlord issued the August Two Month Notice with the intention of the wife living in the unit, and then issued the October Two Month Notice approximately six weeks later stating that they changed their mind and their son will be occupying the unit.

I am mindful that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

The Tenant testified that she does not believe that the Landlord's son will be moving into the unit. The Landlord's son was not present to provide direct testimony that he intends to live in the unit, and there is no documentary evidence from the Landlord. I note that even if the Landlord's documentary evidence had been accepted and considered, there was no evidence present supporting that the Landlord's son will be occupying the rental unit.

I find that the Landlord has not persuaded me or met the burden to prove that the August 2022 or October 2022 notices were issued in good faith.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 29, 2022, and October 17, 2022, is granted. The notices to end tenancy are cancelled.

The tenancy will continue until ended in accordance with Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. The Tenant is authorized to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 29, 2022, and October 17, 2022, is successful. The Notices are cancelled.

The tenancy will continue until ended in accordance with 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 31, 2023

Residential Tenancy Branch