



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNL FFT

Introduction

The tenants seek an order cancelling a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") pursuant to section 49(8) of the *Residential Tenancy Act* (the "Act"). They also seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Are the tenants entitled to recover the cost of their application filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence necessary to resolve the issues of the dispute and explain the decision is included below.

The tenancy began June 15, 2021. Monthly rent, which is due on the 15th day of the month, is \$2,400.00. There is a \$1,200.00 security deposit. A copy of a tenancy agreement was in evidence.

On July 28, 2022 the landlords served an incomplete copy of the Notice upon the tenants by pre-agreed email. On October 5, 2022 the landlords re-served a complete Notice on the tenants in person. A copy of that Notice was in evidence.

The reason for issuing the Notice is that the landlords, who are retiring this year, intend in good faith to occupy the rental unit. The rental unit is a condo in a "good location," near downtown and many shops and restaurants, and is across from the hospital. The rental unit is preferable to where the landlords currently reside in Burnaby.

The tenants argued that there are many instances of the landlords' past conduct that suggest that they are not issuing the Notice in good faith. They referred to irregularities in the original tenancy agreement; inconsistencies that are not Act-compliant. They testified about the original tenancy having an end date, instead of it being renewed or renewable, which is currently required under the Act. The tenants testified about the landlords trying to "strong arm" them into signing a new tenancy agreement with a much higher rent. In summary, the tenants argued that the landlords have a history of not acting in good faith.

The tenants further testified that the landlords never told them about their intention to move into the rental unit until they were served with the Notice. Indeed, even when the landlords served the first incomplete Notice, that this incompleteness further suggests a pattern of not acting in good faith.

In his submissions, which were affirmed as truthful by the landlords, counsel argued that the previous inconsistencies and non-complying clauses of the tenancy agreement were due to the landlords' incomplete familiarity with the Act. The landlords are Ukrainian immigrants and were not fully aware of the requirements under the Act. There was no trickery on their part, and issuing the Notice is not part of some "nefarious plan" to evict the tenants.

In their submissions, the tenants reiterated that they do not believe that the landlords have issued the Notice in good faith. They argued that the landlords' supposed reasons for moving in keep changing. And, while it is not the tenants' intentions to stay in the rental unit for the long term, they simply want a month to month tenancy with the stability of being able to move out when they are ready.

Analysis

In an administrative hearing, the person making a claim must provide evidence that it is more likely than not that the facts occurred as claimed. This is known as the "balance of probabilities" standard of proof. The burden of proof is on the person making the claim. Where a tenant disputes a notice to end the tenancy the onus shifts onto the landlord to prove the reasons or ground on which the notice was issued.

The landlords issued the Notice under section 49(3) of the Act which states that a landlord may end a tenancy "if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The parties dispute whether the Notice was issued in good faith.

“Good faith” is a legal term that means a party is acting honestly and without intention to defraud or avoid their obligations under the law or agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827), the Supreme Court of British Columbia ruled that a claim of good faith requires honesty of intention and absence of ulterior motives. This means that a landlord must honestly intend to use the rental unit for the stated purpose on the notice to end tenancy. If a tenant raises the issue of an ulterior motive or purpose for ending the tenancy, the burden is on the landlord to prove that they are acting in good faith. In disputes where a tenant alleges the landlord of not acting in good faith, the tenant may provide evidence to support their claim.

In this case, while it is not lost on me that the landlords included non-compliant clauses in the tenancy agreement, I am not persuaded that the landlords ever conducted themselves in a manner that would suggest dishonesty, trickery, or the like. Mistakes happen, and mistakes happen as a result of ignorance of the law. Indeed, the landlords’ retaining of legal counsel suggests a desire to ensure full compliance going forward. However, past errors that occurred in circumstances such as this case does not, with respect to the tenants’ argument on this point, lead me to conclude that the landlords do not honestly intend to use the rental unit for the stated purpose on the Notice. I cannot accept that the landlords’ mistakes equate to a pattern or propensity to be dishonest.

In summary, I do not find that the tenants have provided sufficient evidence to prove that the landlords do not intend in good faith to occupy the rental unit. As such, I must respectfully dismiss the tenants’ application to cancel the Notice, and their claim to recover the cost of the application filing fee. The *Two Month Notice to End Tenancy for Landlord’s Use of Property* served on October 5, 2022 is upheld.

Having reviewed the latter of the two notices to end the tenancy, I find that it complies with the form and content requirements as set out in section 52 of the Act.

Pursuant to section 55(1) of the Act, having dismissed the application and having upheld the Notice, the landlords are granted an order of possession of the rental unit. Balancing the landlords’ desire to occupy the rental unit with the tenants’ need to find new accommodation, the order of possession shall go into effect on February 15, 2023. This is the date on which the tenancy shall end.

A copy of the order of possession is issued with this decision to the landlords. The landlords must serve a copy of the order of possession upon the tenants.

Conclusion

The application is dismissed, without leave to reapply.

The landlords are granted an order of possession of the rental unit, with an effective date of February 15, 2023.

This decision is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*.

Dated: January 11, 2023

Residential Tenancy Branch