



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 30, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were present at the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and printed evidence but stated he never received the Tenant's video file. The Tenant confirmed he never served, or attempted to serve, the Landlord with his video file. As stated in the hearing, the Tenant was required to ensure all of his evidence, including his digital evidence, was received by the respondent no later than 14 days before the hearing. This was not done for the digital files. As such, the video file is not admissible, and will not be considered. The rest of the Tenant's evidence and Notice of Dispute Resolution Proceeding has been sufficiently served.

The Tenant confirmed receipt of the Landlord's evidence, which contained his initial note, and the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

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

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenant's application, with leave to reapply, with the exception of the following claim:

- to cancel the 2-Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on September 12, 2022. The Landlord issued the Notice for the following reason:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

- *The Landlord or the Landlord's Spouse*

In the hearing, the Landlord was asked to explain why the Notice was issued, and he stated that he wants to move back into this rental unit, with his wife. He stated that they are currently living in a mobile home and would like to move back into this half-duplex. The Landlord stated that he and his wife raised their children in this rental unit, and it is his wife's dying wish to live out her days in the rental unit because she has emotional connections to the house, having raised kids there. The Landlord further explained that his wife has terminal cancer, and is in a wheelchair, and only has a couple of months to

live. The Landlord further stated that his plans were to do a small bathroom renovation (replace the tub with a wheelchair accessible tub), and he was also going to repaint the unit, prior to moving in. The Landlord stated he is not doing any further renovations, despite what the Tenant alleges.

The Tenant stated that the Landlord should have issued a 4 month notice to end tenancy if he was planning on doing renovations. The Tenant asserts that the Landlord is planning on doing more significant renovations, but he did not provide any evidence in support of this.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to occupy the unit (as he has indicated on the Notice).

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that he, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

B. GOOD FAITH

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.

[...]

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.

I have considered the testimony and the evidence on this matter, in totality. I note the Tenant suggested that this Notice is not valid because the Landlord intends to renovate the rental unit, which means he should have given a 4-Month Notice. The Tenant

asserts that the Landlord may be doing larger renovations than he is admitting to in the hearing. However, the Tenant had no evidence to support this assertion. In contrast to this, the Landlord provided a detailed and compelling explanation as to what he will be doing in the bathroom so that his terminally ill wife, who is in a wheelchair, can use the shower for the last few months of her life. The Landlord also stated that he plans to repaint the walls, and do some minor wall patching, otherwise he is simply going to move in and live there with his wife as long as possible.

I have considered the totality of the situation, and I do not find the Landlord, after issuing the Notice, is precluded from doing minor renovations to make the rental unit more suitable for his and his wife's occupation. In fact, I find it is consistent with his stated use, since it appears his wife has extremely limited mobility and requires the shower renovation to function day-to-day. Although there is a provision, under section 49.2 of the Act for a Landlord to end a tenancy for renovations and large scale repairs, which require vacancy of the rental unit for an extended period of time, I do not find the repairs relating to this rental unit are sufficiently extensive or significant such that they could not issue a 2 Month Notice and subsequently do some renovations to make the unit more suitable for occupation.

I found the Landlord's explanation as to why he and his wife want to move back in was compelling and sufficiently detailed and I find he has supported his good faith intentions. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 30, 2023

Residential Tenancy Branch