



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNL FFT

Introduction

The tenant seeks to cancel 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"). He also seeks to recover the cost of the application filing fee.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have carefully considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute, and to explain the decision, is included below. It is noted that the only documentary evidence submitted was a copy of an unsigned tenancy agreement and a copy of the Notice.

The tenancy began in 2016. Rent is \$915.00 and there is a \$450.00 security deposit.

The landlord (J.S.) testified under oath that they served the Notice on the tenant by pre-agreed email on July 30, 2022. The landlord confirmed that it was issued because they intent to have landlord L.T.'s adult daughter occupy the rental unit, a two-bedroom basement suite.

The daughter, 60, relocated from Calgary to the Okanagan about two years ago. However, she has been looking for a new place to live but has not found anything suitable. She has been living in the landlord's guest room but would (not surprisingly) prefer to have her own place. She's asked her mother if she could live in the rental unit.

The tenant testified under oath that he has lived here since 2016. In late July of 2022 the landlord showed up at the property with a new tenancy agreement. There was some discussion about the cost of utilities going up, and that perhaps the tenant could help out by paying an additional \$150 on top of the rent. (There is a tenant in the upstairs of the house who proposed a 75/25 split on the utilities, with the tenant paying 25%.)

Utilities have always been covered by the rent, the tenant noted. He was not amenable to this additional amount and told the landlord that he would not be signing the new tenancy agreement. The very next day, on July 30, the landlord sent the tenant the Notice. The tenant argued that (paraphrased): "it seems peculiar that the landlord's daughter was looking for a place for two years and all of a sudden wants to move in after I wouldn't sign an illegal tenancy agreement." He added that he is simply standing up for his rights.

The tenant further testified, after I asked him a few questions, that there was a slight rent increase of \$15 that went into effect in March 2022. However, there were never any previous conversations about the landlord's daughter moving into the property.

In rebuttal, the landlord testified that the tenant's explanation of events was "sort of but not exactly" as it occurred. Rather, there was a conversation between the parties about the proposed utilities charge, but it was "never forced" upon the tenant. The upstairs tenant seemed amenable to paying more, but she wanted a new tenancy agreement reflecting the extra amount. So the landlord drew up two new tenancy agreements. As was the case, the tenant did not sign the new tenancy agreement.

Later that evening, in a family conversation around the dinner table, the family discussed the issue of the utilities. They also discussed whether it was perhaps an appropriate time for the daughter to move into the rental unit. "Family comes first," the landlord observed. The landlord acknowledged that the timing (of the daughter's occupying the rental unit) did look peculiar, but that their intention to let the daughter move into the rental unit is separate from the issue regarding the utility charge and the tenant's choice not to sign a new tenancy agreement.

The landlord's daughter has been looking for two years and it simply arose that perhaps the daughter ought to move into the rental unit.

At the end of the hearing, I canvassed the parties for their submissions on a requested or preferred effective dates of any order of possession, if one were granted.

Analysis

The landlords issued the Notice under section 49(3) of the Act. This type of notice to end a tenancy permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Pursuant to subsection 49(8)(a) of the Act a tenant may dispute a notice to end the tenancy given under section 49(3). When a tenant disputes a notice by making an application for dispute resolution, the onus falls upon the landlord who issued the notice to prove, in a hearing, that they issued the notice for the reason given and in good faith.

In this dispute, the tenant disputes that the Notice was issued because the landlord wants her daughter to occupy the rental unit. Rather, he claims that the Notice was issued because he refused to sign a new tenancy agreement that would have included an additional \$150-per-month utilities charge. Without explicitly stating it, the tenant has, I find, sufficiently argued *prima facie* that the Notice was not issued in good faith.

“Good faith” means a party is acting honestly and without intention to defraud or avoid their obligations under the law. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827), the court 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 they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In this case, while the timing of the landlords’ issuing of the Notice certainly raises eyebrows, it does not in and of itself persuade me to find that the landlords do not honestly intend to use the rental unit for the stated purpose of having L.T.’s daughter occupy the rental unit.

The family’s presence that weekend, coupled with the landlord’s discussion with both tenants about the proposed utility charge, and the family conversation around the dinner table about the daughter moving into the basement suite, are entirely consistent and plausible with a family’s decision to choose the option of ending the tenancy.

That there was no previous discussion about the daughter moving into the basement suite is not, in my mind, indicative of any ulterior motive that abruptly arose on July 29 such that she all of a sudden needed to move in. Rather, by all accounts, the tenancy was event-free and otherwise a good tenancy with no indication of any trouble between

the parties. And, it strikes me as unlikely that the landlords would use the tenant's refusal to accept a \$150 monthly increase as a reason to end the tenancy.

It is not lost me that perhaps the tenant's failure to sign a new tenancy agreement was but one catalyst prompting the family's discussion about the daughter moving in. However, I have no reason to doubt the landlords' sincerity or credibility on the central question: do they honestly intend to have the daughter move into and occupy the rental unit? I have no doubt, in the absence of any evidence to the contrary, that they intend to have their daughter move into and occupy the rental unit. Further, there is no evidence before me to make any adverse findings about the landlords' credibility on this point.

In summary, I do not find that the tenant has provided sufficient evidence to prove that the landlords acted in bad faith by issuing the Notice. As such, the tenant's application to cancel the Notice must, with respect, be dismissed, along with the tenant's claim to recover the cost of the application filing fee, and the claim to dispute a rent increase.

The *Two Month Notice to End Tenancy for Landlord's Use of Property* dated July 30, 2022 is therefore upheld. Further, having reviewed the Notice it is my finding that it complies with the requirements of section 52 in form and content.

Pursuant to section 55(1) of the Act the landlords are granted an order of possession of the rental unit. 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 on the tenant.

Having reviewed submissions about the effective date of this order, I must consider the tenant's request ("May or June"), the landlords' request ("a couple of months"), the urgency of the situation, the nature of the rental market, and the daughter's current living arrangements. It is my finding that the order of possession shall have an effective date of March 31, 2023. This is also the date on which this tenancy ends.

The tenant may, however, end the tenancy before March 31 by giving a notice to end the tenancy under section 50(1) of the Act.

The parties should be aware that the tenant is entitled to receive an amount equivalent of one month's rent payable (subsections 51(1), (1.1), and (1.2) of the Act.)

Last, I would be remiss if I did not draw the parties' attention to section 51(2) of the Act regarding the tenant's right to seek compensation should the daughter fail to occupy the rental unit after the tenancy ends and for a period of no less than six months.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords are granted an order of possession, which is effective March 31, 2023.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 9, 2023

Residential Tenancy Branch