



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlords for the landlords' use of property. The tenants also applied for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me. The parties agreed that they had received each other's evidence in a timely manner.

Issues to be Decided

Have the landlords validly issued the notice to end tenancy?
Do the landlords intend, in good faith, to move into the rental suite?

Background and Evidence

The landlords (CP and EP) purchased the home in February 2021. The tenants (JM and spouse JM) had entered into a fixed term tenancy agreement with the seller in April 2021. The end date of the fixed term was April 2022. The seller and landlord at the time of the sale, requested the current landlords to allow the tenancy to continue due to the fixed term of the tenancy agreement. The landlords agreed to do so.

The monthly rent is \$1,573.25 payable on the 1st of each month. The rental unit consists of a self-contained unit with its own private entrance and is located in the basement of the home. The landlords live on the main level.

The landlords stated that EP runs a business providing piano lessons to her clients. The landlords' previous home was a townhouse. EP stated that her neighbours did not file noise complaints to the strata, but she was concerned that the strata would object to her

conducting a business out of the home and she would have to stop giving piano lessons. EP also stated that they considered moving to a house to allow her to conduct her business freely in a larger space.

The landlords stated that they purchased this home in the suburbs which meant that CP had an additional one hour of commuting time to work but it also meant that EP would have the space to grow her business. EP stated that her goal was to conduct group music classes in addition to the private lessons she provides.

EP stated that when they moved into the home in February 2021, Covid restrictions were in place and the plan for group lessons was put on hold.

On January 30, 2022, the landlords served the tenants with a rent increase effective May 01, 2022.

The parties agreed that there was an ongoing conflict between the parties regarding the tenants' dog and the use of the backyard. In February 2022, the parties got into an argument. On March 14, 2022, the landlords served the tenant with a two month notice to end tenancy for landlords' use of property. The tenant disputed the notice on the grounds that the landlords served the notice because of the argument they had had in February 2022. The matter went to a hearing on July 11, 2022 and the notice was set aside by the arbitrator. The tenancy continued.

On August 28, 2022, the landlords served the tenants with a second notice to end tenancy for landlords' use of property. The tenant disputed the notice in a timely manner.

The tenants stated that the landlords were acting in bad faith and simply wanted the tenant out because of the disagreement regarding the tenants' dog. The tenants stated that since the last notice to end tenancy nothing has changed, and that the landlords have the same ulterior motive to end the tenancy.

The tenants also presented the same argument as they had done in the July 11, 2022 hearing regarding the rent increase. The tenants stated that the landlords served the tenants with a rent increase in January 2022 effective May 2022, which implied that they intended the tenancy to continue beyond the April 2022, which is the end date of the fixed term.

The tenants referred to a disagreement between the two parties that took place in February 2022 and stated that this was the reason for the notice to end tenancy served on March 14, 2022, and continues to be the reason for the notice served on August 28, 2022, which is the subject of this decision.

The landlords stated that in January 2022, Covid restrictions were in place and EP was unable to grow her business by conducting group lessons. EP stated that she has her grand piano in the den on the main floor which is attached to the living area. EP stated that her private lessons are conducted in the den, but the location is not ideal as her three-year-old child often knocks on the door. EP stated that she planned to have her child in the basement with a caregiver while she gives her private lessons, in the den upstairs.

The landlords stated that in February 2022, the Government started relaxing Covid restrictions and they were all removed in March 2022, which gave the landlords the opportunity to run group lessons. The landlords were expecting the tenancy to end in April 2022 which was the end of the fixed term. The landlords stated that since the tenants were showing no signs of moving out at the end of the fixed term, the landlords served them with a notice to end tenancy on March 14, 2022.

The tenants testified that the real reason at that time was the issues with the dog and the use of the back yard and the landlords did not intend to use the basement suite for their own use. The tenants stated that there was no reason to purchase a home with a self-contained suite and side private entrance if they did not want to use it for rental income.

The landlords testified that they needed a side entrance for music students to attend the classes without having to enter the main home. The landlords confirmed that the reason for moving from a town house to a house in a suburb which was an extra hour's commute for CP, was for EP to grow her music business with group lessons. EP added that private lessons are unaffordable for some students who would be more inclined to attend group lessons.

Analysis

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:

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 RTA or the tenancy agreement.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. 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 dishonest motive.

Based on the testimony of both parties, I find that EP teaches music and intends to grow her business by providing group lessons. I further find that the landlords moved from a town house to a distant suburb to buy a house, that would facilitate EP's intentions of running and growing a business in music.

I accept the tenants' concerns that the timing of the rent increase indicated that the landlords intended to continue with the tenancy beyond April 2022 and that it conflicted with the notice to end tenancy served in March 2022. The landlords testified that the notice of rent increase was served on the tenants in January 2022 at which time Covid restrictions were in place. The landlords testified that when the Covid restrictions were fully removed in March 2022, they were able to start group lessons in their home and therefore served the tenants with a notice to end tenancy.

Based on the above, I find that the landlords' explanation of the timeline is reasonable and is supported by the timings of the imposition and relaxation of the Covid restrictions.

While I accept that the tenants' dog and the use of the backyard may also be a reason to end the tenancy and could be termed as an ulterior motive, I find that there is no definitive evidence to support this. I further find EP to be credible when she stated that the reason for wanting the tenancy to end is for her to grow her music business by offering group lessons which cannot not be accommodated on the main floor of the house.

Therefore, I find that on a balance of probabilities, it is more likely than not that the landlords acted in good faith when they served the tenants with the notice to tenancy for landlords' use of property.

For these reasons I must uphold the notice to end tenancy. Accordingly, I grant the landlord an order of possession effective February 28, 2023. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Since the tenants' application is unsuccessful, the tenants must bear the cost of filing their own application.

Conclusion

The notice to end tenancy is upheld. I grant the landlord an order of possession effective February 28, 2023. e

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 25, 2023

Residential Tenancy Branch