



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 16, 2022, wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use, issued on November 2, 2022 (the "November Notice") as well as an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on January 10, 2023. Both parties called into the hearing. The Tenant called in on her own behalf. Both Landlords called in, as did their son, P.B. and an agent, P.M.

Preliminary Matter

The parties attended a hearing before Arbitrator Reid on August 25, 2022. The file number for that matter is included on the unpublished cover page of this my Decision. The nature of that hearing related to a Tenants' Application for Dispute Resolution in which they sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use served April 27, 2022 (the "April Notice"). The reasons the Landlord sought to end the tenancy in that case was that the rental unit would be occupied by the Landlord or the Landlord's spouse, or a close family member of the Landlord or the Landlord's spouse.

Arbitrator Reid granted the Tenants' request and cancelled the April Notice for these reasons:

Overall, I do not find MK's reasons for moving into the rental unit to be sufficiently compelling in light of the parties' dispute history, the Landlord's previous (including recent) conduct following the issuance of other notices to end tenancy for landlord's use, and the other housing options that are potentially available to MK.

Based on the evidence before me, I am unable to conclude that the choice for MK to move into the rental unit was made in good faith without any dishonest motive or ulterior purpose. I am unable to conclude that the rental unit was chosen solely for valid reasons unrelated to the Tenants. I emphasize that as held by the BC Supreme Court, good faith requires an honest intention "with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy". I find that the Landlord has not provided sufficient evidence to dispel the notions of dishonest motive or ulterior purpose raised by the Tenants on a balance of probabilities. I therefore find that the Landlord has not met its onus of proving good faith for issuing the Two Month Notice.

The Landlord issued the November Notice on November 2, 2022, the validity of which is the subject of the hearing before me. The reasons for ending the tenancy were noted as the same as the April Notice, namely, that the property would be occupied by the Landlord or a close family member as defined by the *Act*. The parties confirmed that nothing had changed since the August 25, 2022, hearing and that the Landlord's reasons for wishing to end the tenancy are the same—namely that the property would be occupied by the Landlords' son.

Section 77(3) of the *Residential Tenancy Act* (the "*Act*") provides that, except as otherwise provided, a Decision is final and binding. As discussed during the hearing, the legal principle of *Res judicata* ("the matter is judged") prevents a party from pursuing a claim that has already been decided. *Res Judicata* is an equitable principle that, when its criteria are met, precludes relitigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

All three of the above preconditions apply in the case before me. The question of the validity of the April Notice was decided by Arbitrator Reid on August 26, 2022 and the

decision was final. Further, the claim before me relates to the same parties as in the matter before Arbitrator Reid. Arbitrator Reid canceled the April Notice which was issued for the exact same reasons as the November Notice, that the property would be occupied by the Landlords' son. There is no jurisdiction under the *Act* that allows my reconsideration of this issue.

Should the Landlords disagree with Arbitrator Reid's decision, the only avenue possibly available to the Landlords in this case is to request Review Consideration under the very limited grounds set forth in section 79 of the *Act*, or to pursue a Judicial Review in the B.C. Supreme Court.

The Tenants' request to cancel the November Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

In terms of the Tenants' request that the Landlords comply with the *Act*, *Regulations*, and/or tenancy agreement, the Tenant confirmed that she sought an Order that the Landlords be prohibited from issuing any further 2 Month notices to end tenancy. As discussed, the Landlords retain the right to issue further notices, however, the Landlords are cautioned against issuing further notices pursuant to section 49(4) of the *Act*, if the reasons for issuing the notice remain the same.

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 24, 2023

Residential Tenancy Branch