



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 tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of property. The tenant 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 tenant testified that he served his documentary evidence to the other landlord named in this dispute (KW) and provided a photograph as proof of service. The landlord who attended the hearing (JW), stated that she had not received the tenant's evidence. Based on the tenant's submission of proof of service, I find that the landlord was served with the tenant's evidence package. The landlord JW testified that she did not file any evidence of her own. JW also added that she did not understand what evidence she needed to file to support her notice to end tenancy, when she was the owner of the property.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental suite?

Background and Evidence

The tenancy started in July 2019. The monthly rent is \$1,900.00 payable on the first of the month. The rental unit is located on the upper level of the home. The landlord JW stated that she resides in the lower level of the home. The tenant testified that he is not sure that JW occupies the lower level as he rarely sees her. The tenant testified that he pays rent to KW who visits him every month to pick up rent. The tenant added that the landlord accepts payment of rent in cash only.

The tenant stated that since the start of tenancy over three years ago, he has paid his rent on time to KW and added that during the past year, KW mentioned to him, on multiple occasions that his rent was below market rent and that the landlords could get a much higher rent for the rental unit.

On December 21, 2022, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The reason for the notice was that the landlord or the landlord's spouse wanted to move into the rental unit. The tenant testified that the real reason for the notice was to re-rent the unit at a significantly higher rent.

Right at the start of the hearing, the landlord JW demanded to know the purpose of the hearing. She stated that the rental unit belonged to her and that she intended to move into the rental unit, so she wanted to know why she had to attend a hearing. I explained to JW that the tenant had disputed the notice and that was the reason for the hearing. JW kept repeating that she was the owner of the rental unit and should be able to occupy it without having to go through the hearing process. At one point, JW stated to me *"you are not the owner of the house"* implying that I was not in a position to decide whether the tenant can stay or has to move out..

I explained to JW that the onus was on her to provide an explanation of why she wanted to move into the rental unit. JW finally stated that she needed more space. I then asked JW if there was a change in her situation that would warrant the need for more space. JW hung up, left the conference call and did not return.

After JW left the conference call, the hearing continued and the tenant testified that sometime in July 2022, the landlord wanted to inspect the rental unit without proper notice. The tenant allowed the landlord access. The landlord accused the tenant of making a complaint to the local municipality. The tenant denied the allegation and requested the landlord to provide proper notice to enter because he had a student living in his unit, to help him with rent.

The tenant also described an incident on July 15, 2022, when he arrived home to find his belongings moved to the lower level without any notification. The tenant demanded to know what was going on and the discussion got heated. The tenant stated that JW grabbed his arm and he felt intimidated and therefore he called the police. The landlord JW was instructed by the police to avoid contact with the tenant.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove she is acting in good faith. Based on the testimony of both parties, I find that during the last year, every time KW visited to collect rent, she reminded the tenant that his rent was below market rent and that she wanted to raise the rent to market value.

I accept the tenant's testimony that the landlord is making it difficult for him to occupy the rental unit by entering without notice, moving his belongings and being hostile towards him. The tenant stated that he feels some comfort and security in the fact that the police have warned the landlord JW not to have contact with the tenant and in the event of a problem, he can rely on protection from the police.

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: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

In his application, the tenant raised the issue of a dishonest motive for ending the tenancy. The tenant was sure that the tenancy was being ended to allow the landlord to re-rent the unit at a higher rent. The tenant stated that the landlord owned other properties that she could move in to.

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.

During the hearing, prior to leaving the conference call, the landlord adamantly voiced her argument that since she was the owner of the rental unit, she did not have to provide reasons for the notice to end tenancy other than that she intended to live in the rental unit. I reiterated that she bore the burden of proof of having served the notice to end tenancy for landlord's use, in good faith.

The landlord left the hearing prior to demonstrating that she planned to occupy the rental unit for at least six months and that she did not have a dishonest motive for serving the tenant with a notice to end tenancy for landlord's use of property. The landlord did not provide any information on why other properties owned by her were not suitable for her to move in to.

Based on the evidence in front of me and the partial testimony of the landlord, I find that the landlord did provide sufficient reason for wanting to move into the rental unit to prove that she had intentions of doing so. Therefore, I find that on a balance of probabilities, it is more likely than not that the landlord did not act in good faith when she served the tenant with the notice to end tenancy for landlord's use of property.

For these reasons I must set aside the notice to end tenancy. The tenancy will continue as per the original terms of the tenancy agreement.

Since the tenant is successful in his application, I grant the tenant the recovery of the filing fee of \$100.00. the tenant may make a one-time deduction of \$100.00 from rent that is due on March 01, 2023.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the terms of the tenancy agreement.

The tenant may deduct \$100.00 from rent and pay \$1,800.00 for rent due on March 01, 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 *Residential Tenancy Act*.

Dated: February 14, 2023

Residential Tenancy Branch