



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing and were assisted by an advocate/interpreter EL. The landlord attended the hearing and was represented by his agent/daughter, TW. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is an entire single-family home. The tenancy began some 27 years ago in 1995 with the landlord and the tenants' extended family. The composition of the family changed throughout the years and the landlord entered into a second tenancy with the named tenant SD and the other tenant (not named on the tenancy agreement), her brother, KL. All parties agree that both siblings are tenants under the tenancy agreement and the Act.

The parties agree that the tenants were served with the landlord's 2 Month Notice to End Tenancy for Landlord's Use when it was posted to the door of their residence on October 9, 2022. The tenants filed their application seeking to dispute the notice on October 10, 2022. A copy of the notice to end tenancy was provided as evidence. It states the rental unit will be occupied by the landlord's close family member: the child of the landlord or the landlord's spouse.

The landlord's agent testified that the rental unit will be occupied by her sister, the landlord's daughter. That person, LH was called as a witness by the landlord. LH testified that she gave her previous landlord notice to end her tenancy in November 2022 with an effective date of December 31st. The tenant testified that she lost her job due to Covid and currently has no income. She used all her money to pay for her previous rental unit and is currently in debt. She seeks financial assistance from her family and she intends on moving into the rental unit with her boyfriend. She is embarrassed to require her father's assistance. When I asked if she plans of staying there for more than 6 months, the witness responded saying she will stay there as long

as she can. The landlord provided a copy of his daughter's 2021 tax return and the daughter's notice ending her tenancy with her previous landlord as evidence.

The landlord's agent testified that the tenants have continued to pay rent in cash on the 15th of each month while this hearing was pending with the exception of January 15th. There was a disagreement about the hot water tank not functioning between December 29th and January 15th and whether the tenants followed up on their initial complaint to the landlord. Despite this, the landlord has not yet compensated the tenants with the equivalent of a month's rent for serving them with a 2 Month Notice to End Tenancy for Landlord's Use.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities and this notice was disputed. A hearing has been set for this dispute on May 12th. The file number for this dispute is recorded on the cover page of this decision.

The tenant's advocate gave the following submission. They don't dispute the landlord's daughter's testimony and state they don't know her. The tenants have lived a peaceful life in the rental unit for the past 25 years and attribute the eviction to the landlord's desire to raise their rent. In 2022, the landlord sought to increase their rent by \$50.00 which is greater than the 1.5% allowed under the Regulations. They objected and rent was only raised by \$20.00.

Analysis

The parties agree that the tenants received the 2 Month Notice to End Tenancy for Landlord's Use on October 9th and filed their application to dispute the notice within 15 days, on October 19th in accordance with section 49 of the Act.

Ending a tenancy for occupancy by a landlord, purchaser or close family member is extensively explained in Residential Tenancy Branch Policy Guideline PG-2A. It states:

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

- 1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;*
- 2. is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, **intends in good faith to occupy the rental unit;***
- 3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.*

GOOD FAITH

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. 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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

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. If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case. If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not 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 other ulterior motive.

In this case, the tenants did not question that the landlord's daughter was going to move into the rental unit. During testimony, the daughter admitted to being embarrassed by needing her father's assistance and I find her candor lends credibility to her testimony. I find her testimony to be honest and forthright and I accept it. I find the corroborating evidence of the 2021 tax return and the copy of the daughter's notice ending her tenancy with her previous landlord further proves to me that she does not have the capacity to find another rental unit within her means and that she needs her father's rental unit to live in.

The tenants argued that the landlord tried to raise the rent in excess of the 1.5% allowed under the Regulations and that this act shows the landlord was not acting in good faith. On this point, I do not find a lack of good faith; I find that the landlord was genuinely unaware that he was not allowed to raise the rent by \$50.00 per month (instead of the allowed \$20.00 per month).

I find the landlord has shown good faith in ending the tenancy. I find reason for ending the tenancy, so that the landlord's daughter can occupy it for a period of at least six months, is valid. I uphold the landlord's notice to end tenancy.

Section 55 states: If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55.

Pursuant to section 51(1), the landlord is required to compensate the tenants with the equivalent of one month's rent on or before the effective date of the landlord's notice when a tenant receives a notice to end tenancy under section 49 (2 Month Notice to End Tenancy for Landlord's Use). The parties agree that rent is payable on the 15th day of the month and that rent for the period from January 15th to February 15th has not been compensated for by the landlord. I order that the tenants may withhold rent for the period of January 15, 2023, to February 15, 2023 in satisfaction of section 51.

I order that this tenancy will end at 1:00 p.m. on February 15, 2023 so that the tenants may benefit from the full amount of compensation ordered under section 51. Pursuant to section 55, I grant the landlord an Order of Possession effective at 1:00 p.m. on February 15, 2023.

Although this tenancy is ending, the parties are required to attend the hearing set for May 15th unless otherwise directed.

The tenants are not entitled to recovery of the \$100.00 filing fee for the cost of this application as the tenants' application was not successful.

Conclusion

The application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective February 15, 2023 at 1:00 p.m. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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 02, 2023

Residential Tenancy Branch