



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the filing fee from the landlords for the cost of the application.

Two of the three named tenants attended the hearing and represented the other named tenant, who is a child of the tenants. Both landlords also attended. Both tenants and one of the landlords gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, with the exception of evidence posted to the Residential Tenancy Branch service portal by the landlords the day prior to the commencement of this hearing. One of the landlords indicated that the evidence consists of receipts which the tenants already have. However, that does not satisfy the requirement of exchanging evidence. All evidence must be exchanged, even if the other party has a copy because it is important that all parties know what evidence I have before me. Since the landlords have not provided the late evidence to the tenants, I decline to consider it. All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated September 28, 2022 was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2016 and expired on October 31, 2017 at which time the tenants must vacate the rental unit. However the parties entered into a new tenancy agreement on April 1, 2019 for a fixed term commencing May 1, 2019 and expiring on April 30, 2020 and continues for another fixed length of time. A copy of the first tenancy agreement has been provided for this hearing, but not the second tenancy agreement. The tenants still reside in the rental unit, which is the upper suite of a house and another tenant lives in the lower suite.

The landlord also testified that at the beginning of the tenancy rent in the amount of \$1,900.00 was payable on the 1st day of each month, but the new tenancy agreement specifies \$1,925.00 per month, which was increased effective June 1, 2022 and is now \$2,055.00 per month, and there are no rental arrears. A copy of a Notice of Rent Increase has been provided as evidence from the tenants stating that the last increase was effective May 1, 2020 to \$2,025.00 and the increase of \$30.00, to \$2,055.00 per month effective June 1, 2022.

At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$950.00. The landlords also collected a pet damage deposit in the amount of \$987.50 on February 1, 2020 when the tenants obtained a pet. Both deposits are still held in trust by the landlords.

On September 28, 2022 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by personally serving the tenants, who were both together at the time of service. A copy has been provided by both parties for this hearing, and it is dated September 28, 2022 and contains an effective date of vacancy of November 30, 2022. The reason for issuing it states:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; for the parent or child of that individual's spouse), specifying the child of the landlord or landlord's spouse.

The landlords intend to have their daughter move into the rental unit who is 23 years old. The landlords do not reside on the property, and their daughter is currently living with the landlords and is looking for a place. The landlords' daughter informed the landlords around the 2nd week of September of her intention to return to the City, and as of January 31, 2023 is guaranteed work with an insurance company. She had gone to Kelowna for university and her initial intention was to stay there and get a job, but for some reason things didn't materialize. The landlord considers a number of factors for

the landlords' daughter, such as affordability, a safe place to live, and the landlords would like her to be close to home. She moved back to the City in December, and couldn't find a suitable suite. She needs more space and works from home so a 1 bedroom unit will not be big enough. Also, the lower level of the rental house has the potential for tenants upstairs to make noise, and some negative things with the lower level suite, such as furnace noise. Her tenancy with another landlord has been taken over by another tenant, and the landlords' daughter currently lives with the landlords.

The landlords do not intend to re-rent, and are aware of compensation set out in the *Residential Tenancy Act*.

The landlord also agreed that he had had a verbal agreement with the lower level tenants on September 30, 2022 about increasing rent with a new tenancy agreement and a new term and new rental amount. The term was for 6 months effective December 1, 2022. There were multiple factors in getting the agreement signed; that tenant works, travels and was still in negotiations with the landlords. Eventually the new tenancy agreement was signed sometime in November, 2022.

The tenant testified that the landlords never were acting in good faith and the tenants were targeted in a house with 2 suites, solely out of greed. Emails provided for this hearing show how many times the landlords asked for more money and gave the tenants an ultimatum to sign a deal so that the landlords' daughter wouldn't move in.

The tenant wrote an email to the landlords on September 13, 2022 because the parties had had a telephone conversation wherein the tenant told the landlords what the tenants could afford, which was a 10% increase. The tenants were worried they would lose their family home, and thought that would help the landlords. However, the landlord said that wasn't good enough, became very heated and then said, "That's fine, my daughter is moving in," and that's when the tenants found out about the landlords' daughter. From then until the 27th, after the tenants were told that the landlords' daughter was moving in, the landlords continued to try to negotiate more money, and copies of emails have been provided for this hearing, one of which dated September 22, 2022 states that if the tenants pay \$2,500.00 they will find another suite for their daughter; another ultimatum.

On September 27, 2022 the landlord states that the landlords may consider extending and would try to hold off for a few months, and for the tenants to "let me know," and if not, the landlords would have to give the Two Month Notice to End Tenancy for Landlord's Use of Property the following day; another threat. The next day the Notice was served.

Other emails were exchanged after the tenants were served with the Notice wherein the landlords continued to negotiate saying they would rip up the Notice. Another email provided dated Oct 1, 2022 talks about a new 6 month agreement. The tenants were confused about the landlords' intent and acting in good faith. The next day the landlords ask if the tenants are open to discuss and work with the landlords; an attempt to continue to negotiate, sign a new tenancy agreement and increase the rent. The landlords are not acting in good faith and working out of greed.

The tenants also have a good relationship with the downstairs tenant and has talked to her about that suite and whether or not she got a cry for help from the landlords about not being able to afford the house, and she did not. The downstairs tenant has provided a letter for this hearing stating that the landlords reached out to her on August 31, 2022. However, the landlord had testified that the downstairs suite was not available for the landlords' daughter. No verbal agreement was made with the downstairs tenant.

The landlords' story continues to change, and the tenants strongly believe the landlords are not acting in good faith; talking about money in every email, and especially considering that the tenants pay more rent than the downstairs tenant. The landlords' daughter could have moved in there. The tenant believes the landlords would wait out the 6 months and then re-rent.

The second tenant (SG) testified that a photograph of another tenancy agreement has been provided for this hearing. It is for another house that the landlords own. On August 1, 2022 the landlords signed a new lease with that tenant for 1 year. Rent was \$1,300.00 and was raised to \$1,800.00 for a new tenant for a 1 year lease. Nine days after they got the increased rent, the tenants received the Two Month Notice to End Tenancy for Landlord's Use of Property.

Prior to asking the tenants for a 30% increase, the landlord asked the tenant in the upper level of the other house for an increase of \$600.00. The landlords got a taste of market rent, and pressed the tenants for an increase. The landlords' tactics are based on greed.

SUBMISSIONS OF THE LANDLORDS:

The landlords tried to work on negotiating a date for the tenants to vacate. The landlords' daughter needs to move in.

SUBMISSIONS OF THE TENANTS:

None

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlords must demonstrate good faith intent to accomplish the stated purpose for ending the tenancy within a reasonable time after the effective date of the Notice, with no ulterior motive.

I have reviewed the evidentiary material, and it is clear that the landlords had alternative places for their daughter to reside, but instead negotiated higher rents with those tenants.

I also agree with the tenant that all of the negotiations for this tenancy related to more money, and that those "negotiations" carried on after the landlords issued the Notice.

It appears that the landlords have been successful in increasing rent by creating new tenancy agreements for tenants, and that is not illegal.

The landlord testified that he is very aware of the compensation required by the *Act*, and I accept that the landlords will avoid the punitive damages set out in the *Act* by ensuring that their daughter will occupy the rental unit for at least 6 months. However, that is not the be-all, end-all. The landlords must demonstrate no ulterior motive. I find that the landlords have demonstrated an ulterior motive, to re-rent after 6 months at a higher rental amount in a new tenancy agreement with a new tenant. Therefore, I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property and the tenancy continues until it has ended in accordance with the law.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlords in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may serve the order on the landlords and file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated September 28, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 17, 2023

Residential Tenancy Branch