



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

On October 5, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated September 20, 2022, and to recover the cost of the filing fee for the Application.

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the Landlord intend, in good faith, to move into the rental unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy originally began more than ten years ago. There were changes to the terms of tenancy and the parties entered into a new

tenancy agreement as of February 1, 2020. Rent in the amount of \$1,282.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$550.00.

The Landlord owns a side by side four plex that contains two upper units and two lower units. The Landlord occupies a lower unit directly below the Tenant's unit. The Landlord stated that the rental units are approximately 750 square feet in size. The Landlord stated that the property was originally a side by side duplex, and the lower basements of each unit were converted into rental suites.

The Landlord issued the Tenant a Two Month Notice to End Tenancy For Landlord's Use Of Property dated September 20, 2022 ("the Two Month Notice"). The Landlord testified that the Two Month Notice was served to the Tenant in person on September 20, 2022. The reason for ending the tenancy cited within the Two Month Notice is:

- *The rental unit will be occupied by the Landlord or the Landlord's spouse.*

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is January 31, 2023.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant received the Two Month Notice on September 20, 2022, and disputed the Two Month Notice within the required time period.

The Landlord provided testimony on why he is ending the tenancy. He testified that he lives in the two-bedroom lower unit with his wife and his wife's niece, who moved in there in August 2021. He stated that his niece is occupying one of the bedrooms. He testified that he has set up an office in his living room and the living arrangement is a crowded situation.

The Landlord stated that he intends to move into the upstairs unit and occupy both units as his home. He stated that there is a landing between the upper and lower unit for internal access. He stated that his current crowded situation requires him to pay storage costs to store some of his furniture elsewhere. The Landlord provided photographs of his living space.

The Landlord stated that he intends to occupy and live in both units with no plans to move out.

The Tenant stated that the Landlord is not acting in good faith. He stated that the Landlord met a woman online and married her and she also brought her niece into the living arrangement. He stated that the niece has a boyfriend and has moved out. He stated that the Landlord is trying to evict him so that he can offer the upper rental unit to his niece.

The Tenant stated that it is unfair to evict him and he stated that the Landlord could have moved into the lower unit on the other side of the four plex that recently became vacant about 8 months ago.

The Tenant stated that the Landlord's wife works and has plenty of money to pay for her niece to live elsewhere.

The Landlord replied that he did rent out the lower unit on the other side as of November 15, 2022. He stated that he does not want to occupy the unit on the side. He wants to occupy the upper and lower units on the same side as works better for his needs.

Analysis

Residential Tenancy Policy Guideline # 2 Ending a Tenancy: Landlord's Use of Property addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement."

"If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy."

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.”

Residential Tenancy Policy guideline #2a Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member provides the following information:

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months. (See for example: Blouin v. Stamp, 2021 BCSC 411)

Based on the above, the testimony and evidence of the Tenant and Landlord, and on a balance of probabilities, I find as follows:

I find that the Landlord correctly served a Two Month Notice To End Tenancy For Landlord's Use Of Property. The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse. I find that the Two Month Notice complies with section 49(3) of the Act.

I find that the Landlord has the right to end the tenancy if they intend in good faith to occupy the rental unit. The Landlord stated he has no plans other than to occupy both the upper and lower units as living space.

I have considered the small size of the Landlord's unit and the character and size of the fourplex that was originally a duplex. I accept his testimony that the two units used to be one unit and can be internally accessed. I accept the Landlord's testimony that he intends to occupy the upper and lower rental units on the one side of the four plex property for additional living space.

I have turned my mind to whether or not the Landlord has an ulterior motive to end the tenancy. I have considered the policy guideline that provides that “good faith” means there is no intent to defraud, act dishonestly, or avoid obligations under the legislation or the tenancy agreement. While the Tenant suggests that the true motive of the Landlord is to end his tenancy; to re-rent it to his niece, there was insufficient evidence from the Tenant to support this suggestion. There was no evidence presented by the Tenant that the Landlord is avoiding obligations under the Act or the tenancy agreement or there have been recent disputes and the Landlord is ending the tenancy to avoid an obligation.

With regard to the Tenants submission that the Landlord could have occupied a recently vacant unit on the other side of the fourplex, I find that it is reasonable for the Landlord to reclaim the upper unit based on the original layout of the duplex, rather than the access issues that would be present if he claimed the side unit.

I accept the Landlord’s testimony that he intends to occupy the upper and lower rental units on the one side of the four plex for use as additional living space.

The Tenant’s application to cancel the Two Month Notice to End Tenancy for Landlord’s Use Of Property dated November September 20, 2022 is not successful and is dismissed.. The tenancy is ending. Since the parties testified that February 2023 rent is paid in full, I grant the Landlord an order of possession for the rental unit effective February 28, 2023 after service on the Tenant.

The Act provides that if the Landlord fails to accomplish the stated purpose within the Two Month Notice, the Tenant may apply for monetary compensation.

Conclusion

The Landlord satisfied me that he intends to reclaim the upper unit and occupy it as living space.

I find that the Landlord is not avoiding obligations under the Act or the tenancy agreement.

The Tenant’s Application to cancel the Two Month Notice to End Tenancy for Landlord’s Use of Property dated September 20, 2022 is dismissed.

I grant the Landlord an order of possession for the rental unit effective February 28, 2023, after service on the Tenant.

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 22, 2023

Residential Tenancy Branch