



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMALO'S GROUP PROPERTY MGMT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL, OLC, 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 an order directing the landlord to comply with the *Act* and 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, and make submissions to me. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy? Does the landlord intend in good faith to use the rental unit to house her daughter?

Background and Evidence

The tenancy started on November 01, 2014. The one-bedroom rental unit is located in a four-storey apartment building complex that houses 43 one-bedroom and two-bedroom rental units. The current monthly rent is \$1,000.30 payable on the first of each month.

The landlord testified that the building was owned by her father who passed away 11 years ago. The ownership of the building currently lies with the tenant and her brother who are named as registered owners on the land title. The landlord also stated that she and her brother were holding the property in trust for it to be passed on to their children.

The landlord stated that her 18-year-old daughter (AS) was enrolled in a university that was at a distance from the family residence, in a different city. The landlord added that sometime in October 2022, AS opted to enrol in a college which is closer to her mother's home. AS also expressed her desire to move out of the family home and into a rental unit that was close to the college that she had enrolled in.

The landlord stated that the rental unit was ideal for AS for many reasons, one of them being that the college was a short commute from the rental unit and close to the landlord's home. The landlord stated that since AS has ADHD and suffers from anxiety, persistent depression disorder and allergies, the landlord would prefer that AS move into a home that is close to the college and to the family home. The landlord also added that a family friend of hers lives adjacent to the rental unit and would be a source of support for AS.

On December 24, 2022, the landlord issued the tenant a two month notice to end tenancy for landlord's use of property, to be effective on February 28, 2023. The reason for which the landlord gave the notice to the tenant is described as:

- *The rental unit will be occupied by the child of the landlord.*
- *The landlord 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.*

The tenant disputed the notice in a timely manner. The tenant stated that she found the timing of the service of the notice on Christmas eve, inconsiderate of the landlord. She also stated that the notice may have resulted from retaliation to the tenant's conversations with the media regarding rent increases during Covid.

The tenant is disputing the 2-month notice to end tenancy based on two grounds. Firstly, the tenant believes the landlord does not have the legal right under section 49 of the *Residential Tenancy Act* to issue an eviction notice for landlord's use of property.

Secondly, the tenant believes the notice has been issued in bad faith, and that the landlord has an ulterior motive in evicting the tenant.

The tenant stated that the landlord is holding the rental property in trust and does not have the legal right to serve such a notice. The tenant filed a copy of the title search which shows that the landlord and her brother are registered owners.

The tenant adds that even if such an interest were to be held, the evidence strongly shows that the landlord held an ulterior motive in choosing the tenant's suite and stood to benefit by doing so. The landlord stood to benefit by ending the tenancy of someone who had publicly criticized their decision to try to raise rent during the pandemic and stood to benefit by ending the tenancy of someone who paid significantly below market rent due to the length of their tenure.

According to the tenant, this ulterior motive is made all the more obvious by the fact that multiple open units were available to the landlord at the time of issuing the notice, but rather than take a course of action which fulfilled their primary objective without ending anyone's tenancy, they sought to obtain an ancillary benefit by evicting the tenant.

The landlord responded by saying that the two units that were advertised as available for rent, were two-bedroom units with a much higher rent and had already been booked by new tenants, at the time the landlord served the notice to end tenancy. The landlord stated that there are a limited number of one-bedroom apartments in the building and that they are all occupied by long term tenants.

The tenant stated that to the best of her knowledge, the person the landlord has identified as a family friend is a tenant who lives adjacent to her and that she has spoken with this individual after receiving her eviction notice. The tenant stated that, this individual expressed confusion as to why the tenant was given the notice. It was clear from that conversation that at no point had the landlord made an arrangement with this individual to look after AS, if she were to move in, prior to issuing the eviction notice.

The tenant submits that this reason provided by the landlord for why she was targeted is not supported in evidence, and is an attempt by the landlord to hide the ulterior motive they had in choosing the tenant's suite.

The landlord stated that she has been managing the rental property since 1991 and has never served a notice for landlord's use of property prior to this one.

Analysis

The tenant is disputing the 2-month notice to end tenancy based on two grounds.

Firstly, the tenant believes the landlord does not have the legal right under section 49 of the *Residential Tenancy Act* to issue an eviction notice for landlord's use of property.

In the tenant's evidence package, the tenant states:

A title search for (rental property address), conducted by the Tenant on December 26, 2022, shows the registered owners as "(landlord and her brother)", and that the property has been transferred to them "In Trust".

The tenant filed a copy of the title search which shows the landlord and her brother as the registered owners. During the hearing, the landlord stated that she and her brother were holding the property in trust for their 3 children who are the beneficiaries and who were minors at the time, the property owner passed away. Therefore, it is possible that that AS is a beneficiary. In the absence of documents that show the structure and voting rights of a family trust, I must accept that on a balance of probabilities it is more likely than not that the landlord and her brother are the registered owners and accordingly have the right to serve the tenant with a notice to end tenancy for landlord's use of property.

Secondly, the tenant believes the notice has been issued in bad faith, and that the landlord has an ulterior motive in evicting the tenant.

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.

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 her evidence package the tenant states:

I have been a very good tenant for eight years, always paying my rent on time. I keep the apartment clean and tidy and report repairs immediately to avoid extra damage and costs.

Comparable accommodation at my current rental rate is not available, which poses a huge challenge for me on my clerk's salary.

While I acknowledge the tenant's testimony that she has been a model tenant of eight years, who pays rent on time and cannot afford to move, the notice was not issued because of allegations of failure to pay rent on time. The notice was issued because the landlord wants to use the property for a family member. With respect to the tenant's financial hardship, the *Act* does not give me authority to consider whether or not a tenant will suffer financial hardship if the tenancy were to end.

The burden is on the landlord to prove the intent is to have her daughter move into the rental unit. The landlord has filed sufficient evidence that indicates that AS cancelled her enrollment in a distant university and obtained admission in a college closer to home and to the rental unit. I am satisfied that the landlord intends to use the rental unit for the stated purpose.

I find that regardless of the number of rental units the landlord owns, the landlord has the right to decide which rental unit they wish to occupy.

I acknowledge the tenant feels that the reason for the notice is punitive in nature; however, there is insufficient evidence from the tenant to establish that the notice was not issued in good faith.

When a 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 evidence in front of me and for the reasons listed above, I find that on a balance of probabilities, it is more likely than not that the landlord acted in good faith when she served the tenant with the notice to end tenancy for landlord's use of property. I further find that that on a balance of probabilities, it is more likely than not that the landlord wants to use the rental unit as a residence for her daughter.

I find that the landlord has issued a valid notice and therefore I uphold the notice.

I dismiss the tenant's application to cancel the two-month notice to end tenancy for landlord's use of property, dated December 15, 2022.

Under section 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the notice complies with the requirements regarding form and content. Since the effective date is February 28, 2023, and I find that the landlord is entitled to an order of possession, I grant the landlord an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Since the tenant applied to cancel the notice to end tenancy and has not proven her case, she must bear the cost of filing the application.

Conclusion

The tenant's application to cancel the notice is dismissed. The notice to end tenancy is upheld.

I grant the landlord an order of possession effective two days 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 27, 2023

Residential Tenancy Branch