



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated October 16, 2022 ("Two Month Notice"); and recovery of her \$100.00 Application filing fee.

The Tenant, the Landlord, and counsel for the Landlord, C.T. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on December 1, 2016, and ran to May 31, 2017, and then operated on a month-to-month basis, with a monthly rent of \$930.00, due on the first day of each month. The Tenant confirmed that she paid the original landlord a \$450.00 security deposit. They agreed that this Landlord purchased the residential property in December 2021. The Landlord confirmed that he holds the Tenant's \$450.00 security deposit, and that she paid no pet damage deposit.

The Two Month Notice was signed and dated October 16, 2022, and it has the rental unit address. The Two Month Notice was served via registered mail on October 26, 2022, with an effective vacancy date of December 31, 2022. It was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member.

In the hearing and in his affidavit sworn by the Landlord on February 16, 2023 ("Affidavit"), the Landlord said that he purchased and took possession of the residential property on January 4, 2022. The Landlord noted that this Property contains four suites, one of which the Tenant currently occupies. The Parties confirmed that the Landlord served the Tenant with the Two Month Notice for the Tenant's rental unit.

In the Affidavit, the Landlord said he had always intended to occupy the Tenant's unit in the building when he bought it. He said it:

"...was deemed the most suitable unit for me in long term for the following reasons:

- i. It is the smallest of the two-bedroom units on the property. I am a single man, with a dog. I work remotely for a company in Calgary that requires me to travel as necessary. I make an average salary. This is adequate for my needs.
- ii. It is the only two-bedroom unit on the ground floor unit with no steps which is better suited for the mobility of my mother when she visits.

- iii. It is the only unit that does not face a busy street, but faces the backyard that is better suited for general daily movement of my dog.

The Landlord continued in his Affidavit:

- 9. It was always my plan and intent to eventually occupy [the rental unit]. The reasons I decided to first occupy [another unit] was because the Pre-Purchase Home Inspection done November 26, 2021, identified serious issues, including water damage in the kitchen, bathroom, and bedroom (shared wall with bathroom), issues with a falling ceiling and mold in the attic. I moved into [the other unit] in order to remedy these issues.

The Tenant responded to the Landlord's testimony in the hearing. She said:

In a March 28, 2022, letter [the Landlord] talks about his finances and how much it costs him to run this household, and he asked to near double my rent or leave. ... He was asking to increase rent from \$930.00 to \$1,550.00 or mutually agree to end the tenancy. It goes on in that letter to say I am a valued tenant, and he's happy to have me. If I was to pay the \$1,550.00 per month it would remain at this level for... – he had no intention of taking over this unit. He's just taking it over because I'm not paying him more money. He could have had both units. I don't negate that [the other unit] needed the most work.

The Tenant submitted a copy of this letter she received from the Landlord dated March 28, 2022 ("Letter"). In this Letter, the Landlord quotes and answers some questions the Tenant has asked him. The Letter does review the Landlord's financial situation in terms of the costs he incurs monthly for the property. He also notes:

There was NEVER any intention for 'No changes' to be long term status nor would any reasonable person, either new homeowner or investors coming into this place, would be able to keep it financially sustainable even if they wished it to be. [emphasis in original]

The Landlord provided the Tenant with information about the RTB, so that the Tenant could investigate her rights. The Landlord also offered different options for what *could* happen to the Tenant's unit. These options included:

- 1) Mutual agreement to increase rent to \$1550/month to take effect as of July 1, 2022;

- 2) Mutual agreement to end a Tenancy. The date to be determined at a later time, but not be set later than December 31, 2022; or
- 3) No mutual agreement can be determined at this point. I'm just going to reject the offers and take my chances with the RTB.

In the hearing, the Tenant said:

Speaking to [the Landlord], and in the eviction notice, it's interesting that he bought a million dollar home that has a beautiful ocean view in [the other unit], he renovated, it has sunlight and a deck, no one living above him. It's hard to believe he wants to move downstairs. Not his intention to move into [my unit] was just because our communication has gone downhill.

The Landlord replied:

I did send [the Tenant] a letter per our conversations in January, once I took possession. Some things she shared is she wished to stay there indefinitely or until her daughter finished school. I took that to heart; I was purchasing a home that was home for other people. What if I stayed in [the other unit], as a consideration. I met with her first, and then I wrote the Letter that stated the different options. . . .

Her advocate [N.] had made a number of accusations and comments to me. I addressed all of their questions to be forthcoming. These are all questions that were posed to me. 'Why are you doing this?' [they asked]. The variable about when moving into [the Tenant's unit] was when I started to receive threats from [N.], and it soured a future relationship. This changed my openness to having [the Tenant] as a tenant. From the moment she introduced him into our situation, he had been threatening me, making racial comments, calling me a second class citizen in my own home. I needed to go into [the Tenant's unit] and hit rest, because it's not livable. But I always did want to move into [that unit] – it was the end goal; the only variable was the timing.

I asked the Tenant about her comment that the Landlord was not acting in good faith in evicting her. I asked her for more on this comment, and she said:

I believe he gave up a unit that he could stay in, but now he's renting it for twice as much as before. Everyone got the near same letter. He is paying double. It's clear to me that he wants people to pay double or leave.

Counsel made the following closing comments:

[The Landlord] doesn't have a residence. He's living out of a garage and his car. He's paying rent - short term rental. He's very impacted by not being able to occupy a suite in his own building. The evidence review will show that he was sensitive to the matter of what it costs to rent a suite and maintain a suite - that is why the financial discussion. This reinforces his evidence that he intended from the start to occupy [the Tenant's unit] - the smallest in the building. He is in a position to move back and the present Tenant has known about this since she was served many months ago. He is paying over \$900.00 a month for a storage unit. It was always his intention in good faith.

The Landlord said:

At a high level, I've tried to conduct myself and be transparent and put myself into her shoes. They brought up my race; basically, [N.], from day one talked about sharing these pages she submitted; he said he would put that online and say what a slumlord I am. That changed my timeline. All the evidence of that transparency ended at the end of March when [N.] got involved. [The Tenant] says this transparency was threatening somehow; that was never the intention but to be transparent. She used a bully to intimidate me and harass me, but these are why I sought legal counsel to move forward with my life and get past this. It's unfortunate that this is how it worked out. It expedited the timeline. The evidence before you is her evidence too. I tried to act as much in good faith. The scenarios came from a place to make things work. She left me no choice when she brought in [N.].

Counsel said: "[The Landlord] has met all requirements of having a tenancy for his own use. He did so in good faith and he should be granted the Order and possession."

The Tenant said: "I don't want – I'm not sure what action you are allowed to grant, that I get to stay or I don't. But neither of us want me to be here anymore. I feel I should be compensated in some way."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in

respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most cases, this is the person applying for dispute resolution. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. [emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that both Parties' testimony in the hearing indicates that the Landlord lives in a storage unit and his vehicle, and that he intends to take over the Tenant's suite for his own use. I find that the Landlord offered the Tenant options, which were not appealing to the Tenant.

At one point, the Tenant brought in her friend, [N.], who I find, insulted and threatened the Landlord with racial and other negative comments. I find this was a factor in the Landlord concluding that the Tenant's tenancy had to end. I find I agree that this was a factor speeding up the timing of the Landlord's intention to move into the Tenant's suite; however, I find there were other factors, such as those set out above, which made the Tenant's unit the most practical and appealing to the Landlord. I find the Landlord had a good faith intention to move into the Tenant's unit. Based on the evidence before me overall, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future

disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives an eviction notice under section 49 is entitled to receive from the landlord, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51 (2), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of **12 times the monthly rent payable** under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. **Should the Tenant fail to comply with this Order**, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 07, 2023

Residential Tenancy Branch