



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 19, 2022 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords, the Landlords' agent PK, and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. GS attended this hearing to testify as a witness for the Landlords.

The parties did not raise any issues with respect to service. The Landlords acknowledged receipt of the Tenants' notice of dispute resolution proceeding package (the "NDRP Package") and documentary evidence. I find the Landlords were served with the NDRP Package and the Tenant's evidence in accordance with sections 88 and 89 of the Act. The Tenants acknowledged receipt of the Landlords' documentary evidence. I find the Tenants were served with the Landlords' evidence in accordance with section 88 of the Act.

All parties were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Issues to be Decided

1. Are the Tenants entitled to cancel the Two Month Notice?
2. Are the Landlords entitled to an Order of Possession?
3. Are the Tenants entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a three-bedroom townhouse. This tenancy commenced on December 15, 2017 with a previous landlord and is currently month-to-month. Rent is \$2,000.00 due on the first day of each month. The Tenants paid a security deposit and pet damage deposit of \$1,000.00 each.

The Landlords became owners of the rental unit in April 2022. The Landlords KS and JS are spouses. The Landlords' agent PK is KS's sister. Landlords' witness GS is KS's mother.

PK explained that this is the Landlords' second attempt to obtain possession of the rental unit following a previous hearing in August 2022 (file number referenced on the cover page of this decision). That dispute involved a two month notice to end tenancy for landlord's use of property issued in April 2022 for the same reason as the Two Month Notice. In a decision dated August 26, 2022 (the "Previous Decision"), the arbitrator cancelled the first two month notice on the basis that she was not satisfied the Landlords had demonstrated good faith. A copy of the Previous Decision has been submitted into evidence.

PK confirmed that the Landlords issued the current Two Month Notice in September 2022, copies of which have been submitted into evidence. The Two Month Notice is signed by KS and has an effective date of November 30, 2022. The stated reason is that the rental unit will be occupied by the father or mother of the landlord or landlord's spouse. The Tenants acknowledged receipt of a copy of the Two Month Notice on September 23, 2022 via registered mail.

According to the Landlords' written submissions, the rental unit was purchased for the sole purpose of being used as a primary residence by KS's mother GS. The rental unit is said to be a short drive from KS's residence and the residence of KS's sisters, whom GS helps with babysitting.

PK stated that GS had lived with another son for 16 years prior to moving in with the Landlords and their children in January 2021. PK stated that the other son had moved in with his in-laws due to his mother-in-law needing day-to-day care due to medical circumstances.

According to the Landlords' written submissions, after GS moved in with the Landlords, the dynamic between GS and JS changed. JS was not used to living with her mother-in-law. Due to things becoming progressively worse between GS and JS, KS began looking for separate accommodations for GS. PK explained that in their culture, the responsibility falls on the son to take care of an ageing parent, and the purchase of the townhouse for GS would fulfill KS's responsibility.

The Landlords' written submissions further explained that a townhouse was chosen because GS, a senior citizen, would be able to avoid common spaces like elevators due to the pandemic, GS was used to living in a house previously, and a townhouse was more affordable than a house. PK stated that GS was already transitioning to a smaller space. PK stated that GS currently has furniture and belongings accumulated over the years in storage. PK referred to storage receipts submitted into evidence by the Landlords. PK stated that GS has eight grandchildren and hosts their extended family, so a smaller space would not be suitable for family gatherings. PK stated that it is not abnormal for GS to live in a townhouse.

GS testified that her son KS had purchased the rental unit for her. GS stated that she is currently staying with her daughter and feels like a burden to her children. GS stated that she wishes to live on her own. GS stated that she would use one of the rooms as her bedroom, another for storing belongings, and the third room for when her grandchildren came to visit. The Landlords submitted a signed statement from GS confirming that GS intends to reside in the rental unit as soon as it becomes vacant and that she will use the unit as her primary residence.

PK stated that KS had called the Residential Tenancy Branch and was told to work out a mutual agreement with the Tenants. PK described a meeting between the Tenants, KS, herself, and the Landlords' realtor on February 27, 2022. According to PK, the

Tenants mentioned they wished to purchase a property but were still exploring their options. PK stated that the Landlords were willing to work with the Tenants in the short-term. According to the Landlords' written submissions, the Tenants were informed that a mutual agreement would be mutually beneficial. It would allow the Tenants more time to stay while the Landlords would be compensated more for being accommodating, rather than exercising their legal right to have the Tenants vacate sooner. PK stated that KS did not know about the three-month notice requirement for a rent increase and described it as an honest mistake.

PK stated that it was incorrect to say the Landlords never mentioned anything about GS moving into the rental unit, as those were conversations that the Tenants were not privy to. PK stated that they did not want to share their personal issues with the Tenants. PK stated that unfortunately the Landlords have now had to share very personal struggles with strangers.

PK stated that in the summer, GS was helping more with childcare for her other grandchildren and the conflict with her daughter-in-law JS could be avoided at that time. According to the Landlords' submissions, GS required a move-in date to correspond with the new school year, so KS was willing to accommodate the Tenants for a few months while the Tenants arranged housing. PK stated the Landlords already made it known that the rental unit was to be for the Landlords' own use, but did not want to share more personal details.

PK pointed out that the Landlords did not at any time increase the rent, even though the Tenants had and still would agree to a \$400.00 rent increase. PK submitted that the Landlords know if the rental unit is not used for the stated purpose of the Two Month Notice, the Landlords can be held legally accountable. PK stated that this does not concern them. PK emphasized the Landlords do not need a rent increase but need possession for GS's personal use.

PK explained the real estate market had been competitive when the Landlords purchased the rental unit. PK stated they were told that adding on conditions requiring vacant possession could affect their offer, since the completion date would have to be pushed out and the seller would have to wait longer to receive the money.

In response, one of the Tenants, FV, stated that the Tenants are disputing the Two Month Notice as the Tenants still do not think the Landlords intend to have GS move in. FV argued that the circumstances have not changed.

FV stated that on February 27, 2022, the Tenants met KS, PK, and the Landlords' realtor. FV stated the Tenants were told that KS and his family were living in another property and did not want to uproot their kids. According to FV, KS stated that they would not be able to float two properties with the current rent, and suggested the Tenants pay a market rent of \$3,000.00. FV stated that KS never mentioned about his mother moving into the rental unit.

FV agreed that the Tenants are still looking to buy a property. FV stated that to keep the tenancy going, the Tenants suggested increasing the rent to \$2,400.00 per month. FV acknowledged mentioning that the Tenants expected to move out within six months, but did not reach an agreement with the Landlords to do so. FV denied that the Tenants had backed out of anything.

FV explained that the Tenants received legal advice and did not sign the draft agreement dated April 1, 2022 proposed by the Landlords. This agreement proposed to amend the existing tenancy agreement by increasing the rent to \$2,400.00 per month and ending the tenancy on September 30, 2022.

According to the Tenants, after they refused to sign the draft agreement, they were served with the first two month notice to end tenancy. FV argued that KS gave one story when trying to negotiate higher rent, then gave another story when the first two month notice was issued. FV explained that the inconsistent stories led the Tenants to dispute the first two month notice.

FV stated that the Tenants were still willing to agree to a rent increase to \$2,400.00 provided that the Landlords used the proper procedure, paperwork, and gave three months' notice. FV argued that the Landlords are evicting the Tenants because the Tenants did not agree to an immediate rent increase.

FV stated that the Tenants researched KS's company believe that it is a property management company. FV argued that the Landlords purchased the rental unit for investment and not for their mother. In response, PK stated that KS's company specializes in residential building, not property management. PK stated that there are no plans to build on the rental property.

FV stated that PK was at every interaction and leading some of the negotiations, so the Tenants thought she might have invested in the rental unit. The Tenants submitted a

title search of the property which showed that there was an assignment of rents registered against the property. FV stated that this suggests the property was purchased for investment. In response, PK stated that the assignment of rents is required by the Landlords' bank, and that if the Landlords buy the property for GS, is it considered an investment because it is not for the Landlords' own principal residence.

The Tenants provided written submissions and evidence including email and text message correspondence between the parties.

Analysis

1. Are the Tenants entitled to cancel the Two Month Notice?

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit. A "close family member" includes an individual's parent and the parent of that individual's spouse.

I find GS qualifies as a close family member of the Landlords for the purposes of issuing the Two Month Notice under section 49(3) of the Act.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the Two Month Notice and find that it complies with the requirements set out in section 52 of the Act.

I find the Tenants were served with a copy of the Two Month Notice in accordance with section 88(c) of the Act on September 23, 2022.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. Records indicate the Tenants submitted this application on September 27, 2022. I find the Tenants made this application within the time limit under section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states:

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.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 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 demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant 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 dishonest motive.

Upon considering the sum of the parties' testimony and evidence, I find on a balance of probabilities that the Landlords and GS intend in good faith for GS to occupy the rental unit as stated in the Two Month Notice, without any ulterior or dishonest motive.

First, I find it is undisputed that the Landlords have not raised the rent since taking ownership of the rental unit in April 2022. I find the Landlords did not raise the rent despite the outcome of the first hearing in August 2022 and despite the Tenants' continued offer to increase the rent to \$2,400.00. I find this to be persuasive evidence that the Landlords are not concerned about increasing the rent. I find the circumstances are different from those of the first hearing because six more months have passed since, and the Landlords still have not raised the rent during this time.

Second, I accept the Landlords' evidence that they had wanted a mutual agreement which would have the Tenants stay several more months in exchange for more rent, rather than issuing a notice to end tenancy right away. I accept the Landlords' evidence that their main concern was to confirm a tenancy end date. I have reviewed the text message and email correspondence submitted into evidence by the parties. I find the responses given by PK in text messages dated March 14, 2022 and KS in an email dated April 6, 2022 both focus on confirming an end date for the tenancy, rather than how much rent the Tenants would be paying. Furthermore, I find the draft agreement dated April 1, 2022 prepared by the Landlords also contains more details about how the tenancy would be ended, rather than terms about rent. I find this draft agreement specifies an end date and allows the Tenants to "unilaterally decide" to move out earlier by providing one clear month's notice. This agreement also emphasizes that "The Landlords shall not restrict the Tenants' right to move out earlier." In contrast, the draft agreement briefly mentions the rent being \$2,400.00 per month moving forward, and does not include any terms about payment of rent or future rent increases. I find that when the Tenants refused to sign the draft agreement, they still offered to pay the increased rent of \$2,400.00, which was not accepted by the Landlords. Therefore, I accept the Landlords decided to issue the first two month notice because the Tenants indicated that they wanted to stay indefinitely, not because of an issue with the rent. I

also accept the Landlords' explanation that they did not want to share their personal family issues with the Tenants in the very beginning, so the Tenants were not told about their plans for GS to move in due to issues with JS.

Third, I find the Landlords, PK, and GS have provided clear and cogent reasons to explain why the rental unit would be suitable for GS to live in. I accept the location of the rental unit is convenient for GS and is close to her children's families. I accept that GS can use the space in the rental unit to host family gatherings, babysit her grandchildren, and keep her accumulated furniture and belongings. I am satisfied that these reasons sufficiently address the concern raised by the previous arbitrator about one person residing in a three-bedroom townhouse. I accept GS's evidence that she intends to use the rental unit as her primary residence as soon as she is able to.

I find the Landlords have also provided an explanation as to why they did not instruct the seller to issue a notice to end the tenancy, which I find to be plausible.

Overall, I find the stated reason of the Two Month Notice to be consistent with the previous two month notice that was issued in April 2022. I find the Landlords have demonstrated awareness of their obligations and potential liability under the Act for issuing the Two Month Notice, and continue to stand by the Two Month Notice.

Based on the foregoing, I am satisfied that the Landlords issued the Two Month Notice for GS to occupy the rental unit in good faith. Accordingly, I dismiss the Tenants' application to cancel the Two Month Notice without leave to re-apply.

2. Are the Landlords entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) 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

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the Two Month Notice to comply with section 52 and having dismissed the Tenants' claim to cancel the Two Month Notice, I find the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of tenancy.

In this case, I accept the Tenants have resided in the rental unit for several years and will likely require more than two days to vacate. I also find there is no evidence to suggest that the Tenants have not been paying rent in full or on time. Therefore, pursuant to section 55(1) of the Act, I grant the Landlords an Order of Possession effective 1:00 pm on March 31, 2023.

3. Are the Tenants entitled to reimbursement of the filing fee?

The Tenants have not been successful in cancelling the Two Month Notice. I decline to award the Tenants reimbursement of their filing fee under section 72(1) of the Act.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **1:00 pm on March 31, 2023**. The Tenants must be served with this Order as soon as possible. Should the Tenants 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.

Pursuant to section 51(1) of the Act, the Tenants are entitled to receive compensation from the Landlords equal to one month's rent under the Two Month Notice. If the Landlords have not yet compensated the Tenants for this amount, arrangements should be made to do so on or before March 31, 2023.

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 11, 2023

Residential Tenancy Branch