



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, DRI, RR, LRE, LAT, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a determination regarding their dispute of a rent increase by the landlord pursuant to section 43;
- the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenants JY and YW attended the hearing. The landlord was represented at the hearing by an agent ("**GC**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

JY testified that he provided the landlord with the notice of dispute resolution package and supporting documentary evidence. GC stated that he never received these documents but, despite this, would consent to all the documents the tenants provided to the Residential Tenancy Branch (the "**RTB**") being admitted into evidence. GC stated and, and JY confirmed, that the landlord served the tenants with their documentary evidence. As such, I admit all documents submitted to the RTB by the parties into evidence.

Preliminary Issue – Severing of Application

RTB Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenants' application to cancel the Notice is not related to their other claims against the landlord. JY stated that the most important issue was whether the tenancy could continue. As such, I ordered that all parts of the tenants' application other than their requests to cancel the Notice and to recover the filing fee are dismissed with leave to reapply.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice; and
- 2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

JY and the landlord entered into a written, fixed term tenancy agreement starting September 5, 2021 and ending September 4, 2022. At the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent is \$2,750 and is payable on the 14th day of each month. JY paid the landlord a security deposit of \$1,375, which the landlord continues to hold in trust for JY.

The rental unit is a three-bedroom basement suite located in a single-detached house.

Neither JY nor either of the other applicants reside in the rental unit. Their children, who are students, reside there. The tenancy agreement lists the childrens' names as permitted occupants.

On September 28, 2022, the landlord served JY with the Notice in person. It specified the reason for ending the tenancy as:

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

The landlord indicated on the Notice that the close family member who will occupy the unit is the "the landlord or landlord's spouse".

The Notice specified an effective date on December 4, 2022. The tenants disputed the Notice on October 9, 2022.

GC stated that the landlord and her husband intend to move into the rental unit. The landlord and her husband are currently living with their daughter. The landlord's husband suffers from "severe dementia" and now requires a live in caretaker. There is not enough space in their daughter's house for this caretaker. The landlord and her husband previously lived in the rental unit. GC stated that the landlord's husband is familiar with the layout of the rental unit and argued that this familiarity would be beneficial to him given his dementia.

Additionally, GC stated that the layout and size of the rental unit is optimal for the landlord and her husband's needs, as there are no interior stairs, which are difficult for him to climb. The landlord is unable to sleep in the same room as your husband due to his dementia. As such, they require three bedrooms (one for the landlord, one for her husband, and one for the live in caretaker). He stated that at the landlord's daughter's house, the landlord only has one bedroom for both her and her husband, and that often the landlord will sleep on a couch.

JY testified that the landlord's daughter is his main point of contact regarding the tenancy. He testified that on July 29, 2022 he received a message over WeChat from her asking to increase the rent to \$3,800 when the fixed term ended. He refused. The conversation continued over WeChat, which the tenants submitted screenshots of as well as translations of the discuss (which occurred in Chinese). JY testified that the translations were accurate.

The screenshots show that the landlord's daughter lowered her request to \$3,700 and then to \$3,600, but JY continued to refuse the increase. He advised her of the restrictions on rent increases for existing tenants.

The landlord's daughter responded:

The landlord can propose renovations. Then ask the tenant to move out and vacate, or say their relatives move in and so on. In this case, the landlord will compensate the tenant for one month's rent.

Let's discuss.

So I'm going to get on the phone with you, but you haven't called.

[JY's son] called me today and I told him about the situation

In fact, it is not easy for everyone to understand each other.

In this world, there is nothing absolute.

The owner of the house is my mother, and I told her everything about it. She said she was going to move back and she would give you a two-month notice that you would move out at the end of October

JY argued that his refusal to agree to a significant rent increase is the true reason for the Notice being issued.

JY made other submissions about the suitability of the rental unit for the landlord's husband, but, for the reasons set out below, I do not find it necessary to repeat them here.

Analysis

Section 49(3) of the Act, in part, states:

Landlord's notice: landlord's use of property

49(3) 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.

RTB Policy Guideline 2A discusses what is meant by "good faith". It states:

B. 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

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)).

[emphasis added]

Based on the WeChat conversation between the landlord's daughter and JY, I find that the Notice was issued for an ulterior purpose. I accept that the landlord's daughter attempted to raise the tenants' rent by an amount exceeding the annual rent increase permitted by the Act. I also accept that upon learning of JY's refusal to agree to such an increase she suggested that the tenancy could be ended in different ways, including by

having the landlord move back into the rental unit. JY was undaunted by this statement and did not agree to a rent increase, and the landlord followed through on her daughter's suggestion, and issued the Notice.

I find that there is a direct link between JY's refusal to agree to a rent increase and the landlord issuing the Notice. Accordingly, an ulterior purpose for ending the tenancy exists. I must note that I explicitly make no finding as to whether the landlord's husband would or would not be better off living in the rental unit as opposed to at his daughter's house. It may be the case that this is true and he requires the additional space and layout of the rental unit in order to deal with his deteriorating mental health. However, such a requirement does not obviate the fact that the issuing of the Notice was motivated by another purpose. The existence of a valid reason for wanting to move into the rental unit does not cancel out an invalid reason for ending the tenancy.

As such, I find that the Notice is invalid. I therefore grant the tenants' application to cancel it.

As the tenants have been successful in the application, they may recover their filing fee from the landlord.

Conclusion

The Notice is cancelled and of no force or effect. The tenancy shall continue.

Pursuant to section 72(1) and (2), the tenants may deduct \$100 from one future month's rent payment representing the repayment of their filing fee by the landlord.

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 1, 2023

Residential Tenancy Branch