



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on October 28, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 10, 2023.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. With the assurance from each that they received full disclosure from the other, I proceeded with the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Two Month Notice?

If the Tenant is unsuccessful, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the Tenant's original tenancy agreement. The Tenant with the previous owner/landlord signed the agreement on July 27, 2019 for the tenancy that began on August 1, 2019. The rent was \$1,500 at the start of the tenancy, increasing to \$1,552.50 by the time of this hearing.

The Landlord bought the rental unit property on January 31, 2021, with the sale completed on February 25, 2021. In the Landlord's evidence is a subsequent tenancy agreement listing the Tenant along with a sublet tenant. According to the Tenant, the Landlord made the sublet tenant sign this agreement in October 2022. The Tenant stated they would not sign this subsequent agreement because of changes made, with an example being the Landlord's requirement for the Tenant's own insurance.

The rental unit property has four units; the rental unit as the subject of this tenancy is one of those four.

The Landlord signed the Two-Month Notice on October 12, 2022. The Tenant provided a copy of this document in their evidence. This shows the move-out end-of-tenancy date as December 31, 2022. The Tenant received this notice via registered mail and directly from the Landlord via email.

In the Application the Tenant presented that the Landlord was "acting in bad faith when claiming personal use of [the] unit." Counting the other units at the rental unit property, the Tenant described the rental unit in question as "the 3rd unit that the owner moves into within our complex." They submitted the advertisements posted by the Landlord for each unit. According to the Tenant these ads appeared approximately two or three months after the Landlord occupied each of those other units.

The Landlord provided a written summary, and their statements in the hearing were a re-statement of this summary. They occupied another 3-bedroom unit at the rental unit property for approximately 5 months, from February 2021 through to June. This was not following an eviction of that other tenant, and at the time of their purchase they had not even met the previous tenant from that other unit. Contrary to what the Tenant submitted, the Landlord did not evict the tenant from this rental unit so that they could live there. The Landlord submitted a copy of their property purchase contract which states specifically: "Three-bedroom suit [*sic*] will be vacant possession."

Specific to the 3-bedroom unit, the Tenant presented a brief summary of the unit. Those tenants moved out on February 28, 2021, and there was an ad posted on April 26 for availability on July 1, 2021. In the hearing, the Tenant specified that these tenants were informed the rent would increase. The Landlord submitted that this claim was fabricated.

After this period in the three-bedroom rental unit, the Landlord stayed in California from June 2021 to the end of 2021. At this time, they acquired tenants for the 3-bedroom unit. The stay in California was with immediate family members who resided there, and after a period of ensuring completion of needed repairs at the rental unit property.

The Landlord then returned to the rental unit property, and occupied another unit, known as the "laneway house" for more than 6 months in 2022. They had to undertake renovations in that particular unit, and this was after that tenant's own separate notice to the property manager that they would leave entirely on their own. This notification is in the Landlord's evidence, dated November 29, 2021, with that Tenant leaving on December 27. As of July 2022, the Landlord has rented out the laneway house to other tenants.

For this laneway house, the Tenant presented that the Landlord issued a notice to end tenancy for the Landlord's own use, to end by February 1, 2022. On May 10, 2022, the Landlord then advertised this laneway unit's availability for July 1, 2022. The former tenant from the laneway house attended the hearing and confirmed they received a tenancy-end notice from the Landlord, and they left in December 2021. They surmised the Landlord was "doing this with all units, just to evict tenants." This former tenant was aware the Landlord lived there for "a couple of months" and then acquired new tenants in that laneway unit.

In the separate other one-bedroom unit, the Landlord's child occupied the rental unit from February 2023 going forward. This was after that other tenant from that unit ended the tenancy on their own in January 2023.

In the hearing, the Tenant specified they did not know anything about previous tenants in this one-bedroom unit.

Specific to the Tenant's rental unit and ending this present tenancy for their own use, the Landlord stated their own need was prompted by their family members moving back to Canada from California. The Landlord stressed they did not claim any other locale as

their principal residence in BC, and this rental unit will be their principal residence going forward in 2023.

In their evidence, the Landlord presented that their one child graduated from university and quit their job in California to return to Canada, together with their partner. This is that child that occupies the one-bedroom unit. Their other child will move back to Canada soon, together with their partner. Their immediate family members' return to Canada is the true reason the Landlord needs this rental unit for their own use, and the reason for ending this present tenancy. The Landlord presented records of their children moving, centering on these reasons. This includes medical administration records showing that their children will imminently reside in BC, and completion of study in that California learning institution.

In summary, the Tenant submits there is a pattern of the Landlord moving into each unit that becomes vacant, each time to increase the rent. As with the laneway house and the 3-bedroom unit at the rental property, the Landlord intends to evict the Tenant here, then re-rent the unit as soon as expeditiously possible in order to increase rent in that rental unit. The Landlord's true reason for ending this tenancy is *not* for their own use of the rental unit. This constitutes "bad faith" from the Tenant's perspective.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The *Act* s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss a tenant's Application or uphold a landlord's notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

The tenets of "good faith" are set out in the *Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member*. This is "a landlord is acting honestly, and they intend to do what they say they are going

to do.” The information relevant to this consideration may include the Landlord’s previous occupancy of other units under their control.

This would entail, as the Tenant submits here, that the Landlord ended tenancies in the past to occupy those rental units short-term, then intending to re-rent them at a higher rent. The Tenant presented that the Landlord did this twice in the more recent past.

I note the end-of-tenancy processes concerning two other units, presented by the Tenant here, are not subject to my decision on whether the end to either of those tenancies was valid. The Tenant drew upon the Landlord advertising the rental unit in each of those cases a relatively short time after their move into either of those units. I find the Landlord in either case was not precluded from planning ahead – in terms of advertising ahead of time to target a specific new tenancy start date – in order to secure a tenant at a future time. I find this does not point to a pattern of the Landlord evicting other tenants, then short-term occupying the rental unit in order to simply re-rent them at a higher rate. In either case, I find a significant period of time had passed before the Landlord moved on with other designs for the rental unit property, ones which were legitimate in their undertaking.

Aside from the Landlord previously occupying two separate other units, I give weight to the other evidence presented by the Landlord as showing in reality where things are at for their other family members who are returning (or have returned) to Canada. I find what the Landlord presented shows their family circumstances as necessitating their own use of the rental unit here. The spectre of “bad faith” illustrated by the Tenant here does not outweigh the Landlord’s evidence on their family’s circumstances. One very strong piece is the Landlord’s own child who currently occupies the one-bedroom unit at the rental unit property.

Had the Landlord *not* presented the circumstances of their family members and the return to Canada, two other tenancies’ ending at the property could point to a prevalent pattern of the Landlord occupying that space only temporarily to merely meet a timeline occupancy requirement. I find the Landlord presented sufficient evidence to show their need for the rental unit based on their family’s circumstances, and by presenting this evidence the Landlord has overcome the burden of proof to show they are ending this tenancy in good faith. The Tenant did not provide sufficient evidence to show that the Landlord’s intention for this individual rental unit in question was to re-rent the rental unit without occupying it for at least 6 months.

In sum, I find the Landlord's need is legitimate in these circumstances, making the Two-Month Notice valid.

For these reasons, I uphold the Two-Month Notice issued on October 12, 2022 and find the Landlord issued it in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the Landlord is entitled to an order of possession, effective two days after they serve it to the Tenant.

The tenancy shall end with the Landlord's service of the Order of Possession. Because the Tenant was not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord must serve this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it may be 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 s. 9.1(1) of the *Act*.

Dated: March 15, 2023

Residential Tenancy Branch