



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL OLC FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 17, 2022 (2 Month Notice), for an order directing the landlord to comply with the Act, Regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, a tenant advocate, TO (advocate), the landlord, an agent for the landlord, AY (agent) and the son of the landlord, AG (son) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. A summary of the evidence is provided below and includes only that which is relevant to my findings.

As both parties confirmed that they had been served with documentary evidence and had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties confirmed their email addresses and that they decision would be sent by email to both parties. The hearing lasted a total of 62 minutes.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, should the tenant recover the cost of the filing fee?
- If no, should the landlord be granted an order of possession?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on May 1, 2014. Monthly rent was \$700 at the start of the tenancy in 2014 and is currently \$783 per month. Monthly rent is due on the first day of each month.

The tenant was served on October 17, 2022 with the 2 Month Notice and the tenant filed their application to dispute the 2 Month Notice on October 31, 2022, which is within the 15-day timeline provided under the Act. The effective vacancy date listed on the 2 Month Notice was December 31, 2022, which has passed.

The reason listed on the 2 Month Notice states:

Envelope ID: 58E4FA32-BEC2-442E-A648-4B8B8E9CDD069
Notice for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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). Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☒ The father or mother of the landlord or landlord's spouse

☐ 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.

☐ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

Purchaser Information: (complete if applicable)

Landlord's evidence

The son testified that LXL, who is the mother of the landlord's spouse, VZ, plans to reside in the rental unit. The son testified that there are 2 basement suites in the home, the basement rental unit 1, which is the subject rental unit (BSMT 1) and a second basement unit 2 (BSMT 2). The tenant occupies BSMT 1. The son testified that in 2013, LXL had previously occupied BSMT 1 but moved away due to her husband passing away. The son confirmed that LXL currently resides with his sister MG at a Rupert Street address (Rupert Home).

The son testified that BSMT 1 is more suitable now for LXL as LXL is blind and has fallen one or two times in the past few years and that there are too many stairs at the Rupert Home so the BSMT 1 is ground level so has no stairs to deal with. The son described the Rupert Home as having 3 suites in the home, the first is the upper portion,

which they plan to rent out in the future and then 2 lower suites both of which have some stairs and rent currently at \$2,000 per month each.

The son confirmed that their parents also own a home in East Vancouver on 29th Avenue (29th Avenue Home). The 29th Avenue Home has 3 rental units, the upper 3 bedroom unit renting for \$2,500 per month, a lower 1 bedroom unit renting for \$1,500 per month and a lower 2 bedroom unit renting for \$2,000 per month. The son also explained that the 29th Avenue Home is a partnership with their uncle and that LXL does not like that area of Vancouver to live.

The son also testified that BSMT 1 has a garden and that LXL likes to garden as a hobby. The son also referred to a letter submitted by their father and the owner of the home, MLG. That letter indicates that LXL is 86 years-old and due to old age needs more personal care due to a “body balance problem” and that BSMT1 has a “shower instead of a bathtub like the suite she lives in now. For personal care by herself will be easier/safer.” The son and the tenant confirmed that BSMT1 has a bathtub and not a shower and that BSMT 2 has the shower out of the two units. The son testified that LXL is “needing more independence.”

Tenant's evidence

The tenant and the advocate referred to a previous hearing, the file number of which has been included on the cover page of this decision for ease of reference and will be referred to as the Previous Decision. In the Previous Decision, the landlord used the same reason on an earlier 2 Month Notice, but failed to attend the hearing to present any evidence as to who was moving into the rental unit. The advocate stated that the earlier 2 Month Notice was not issued in good faith as the landlord attempted to increase the monthly rent illegally by asking for an 8.5% increase from \$783 to \$850 in September 2021 and that 2 Month Notice was ultimately cancelled in May 2022.

The advocate stated that the in October 2022, BSMT2 was vacated and was available to LXL and in November 2022 the landlord instead rented out BSMT2 for \$2,000 per month, which was confirmed in the tenant's evidence which supports that the new tenant in BSMT2 is paying \$2,000 per month.

The advocated also pointed out the contradiction by the son who presented the letter stating that the LXL requires a shower but confirmed that that BSMT1 does not have a shower, it has a bathtub only and that it was BSMT2 that has a shower and that was available in October 2022 when the 2 Month Notice was issued and instead was re-

rented for \$2,000 per month, which is significantly more rent than what the tenant is paying at \$783. As a result, the advocate raised the issue of rent being an ulterior motive as to why the 2 Month Notice was issued for BSMT1.

In addition, the advocate stated that at no time during the 14 months since the first 2 Month Notice was issued, did the landlord ever mention LXL being the person who planned to occupy the rental unit and that it was only 2 weeks before the hearing that any details of LXL were provided for the hearing.

In addition, the advocate cited *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827, where 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.

The landlord denied that there was any ulterior motive regarding the 2 Month Notice.

The advocate stated that the onus of proof is not on the tenant to prove anything, and that the onus is on the landlord to prove that there is no ulterior motive and that the 2 Month Notice is being issued in good faith. The advocate also raised the issue that the photo ID provided for LXL has no shared name with the landlord or their spouse and as a result, question if LXL is actually related to the landlord or their spouse. The advocate also raised a concern regarding the ID being old and expired in 2018 and that the citizenship card could not be read so asked why a current BC Services Card could not be provided for LXL. Furthermore, the advocate said the testimony of the son was inconsistent as the son testified that LXL was “blind” but in the letter from the landlord there is no mention of LXL being “blind” and instead describe a “body balance problem.”

Finally, the advocate stated that the son was also inconsistent when he described LXL “needing more independence” yet the letter from the landlord claims LXL “needs more personal care.”

The son responded by saying LXL is a real person and will be 100% moving into BSMT 1.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I will first address credibility. I find the son is not credible for the following reasons:

- A. The son testified that LXL wants a shower yet BSMT1 has a bathtub, which I find is contradictory.
- B. The son testified that LXL needs more independence, yet the letter from the landlord claims LXL needs more personal care, which I find is contradictory.
- C. The son testified that LXL is blind, yet the letter from the landlord makes no mention of LXL being blind, and instead mentions a body balance problem, which I find is contradictory.

I find the tenant and advocate credible, as their testimony was consistent throughout the hearing and was not contradictory at any point in the hearing. Therefore, I afford very little weight to the testimony of the son and significant weight to the testimony of the tenant and advocate.

In addition, as BSMT 2 was available in October 2022 according to the evidence before me, and did have a shower which is what the letter confirmed LXL preferred, I find this raises the issue of a dishonest motive. I have reached this finding as BSMT2 was re-rented for \$2,000 instead of being provided to LXL and instead, BSMT1 is being suggested, which only has a monthly rent of \$783 comparatively.

RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member (PG 2A) states in part, which applies:

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)).

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.

[reproduced as written]

Based on the above and considering that I find the son was not credible, I find that BSMT2 was a better fit for LXL as it had the shower that according to the son and landlord letter, LXL would prefer and was vacant around the time the 2 Month Notice was issued. Instead, I find that it is more likely than not that the landlord has issued the 2 Month Notice for BSMT1 with the bathtub because of the lower rent of \$783 versus the new \$2,000 rent being paid for BSMT2. Consequently, **I cancel** the 2 Month Notice due to lack of good faith. The 2 Month Notice dated October 17, 2022, is of no force or effect as a result.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 72 of the Act, in the amount of **\$100** for the filing fee. I authorize the tenant to a **one-time rent reduction in the amount of \$100** from a future month of rent, in full satisfaction of the tenant's recovery of the cost of the filing fee.

All orders are made pursuant to section 62(3) of the Act.

As this is now the second 2 Month Notice cancelled during this tenancy, should another 2 Month Notice be issued during this tenancy, the tenant is at liberty to also contact the

RTB Compliance and Enforcement Unit (RTB CEU). The RTB CEU website is located at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement>

Conclusion

The 2 Month Notice issued by the landlord is cancelled and is of no force of effect due to a lack of good faith.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant may deduct \$100 from a future month of rent in full satisfaction of the filing fee as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 15, 2023

Residential Tenancy Branch