



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CAP J PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

On November 29, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated November 14, 2022, and to recover the filing fee for their application. The matter was set for a conference call.

One of the owners of the property (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties confirmed that they have exchanged the documentary evidence that I have before me in these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice dated November 14, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on March 1, 2012, that rent for this tenancy started in the amount of \$2,150.00, and as of the date of this proceedings is \$2,610.00 per month, to be paid by the first day of each month, and that the Tenant had paid a security deposit of \$1,075.00 at the outset of this tenancy.

The Landlord testified that they served the Notice to the Tenant on November 14, 2022, by Canada Post Registered mail. The Notice indicated that the Tenant was required to vacate the rental unit as of January 31, 2023. The reason checked off by the Landlord within the Notice was as follows:

- 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.
 - Please indicate which close family member will occupy the unit.
 - The child of the landlord or landlord's spouse.

The Landlord testified that their daughter would be moving into the rental unit.

The Tenant testified that they had been initially informed by the other owner, of this rental building that it was the son of the Landlord that would be moving into the rental unit, not the daughter.

The Landlord testified that the other owner, their brother, did initially say it was their son that would be moving in but that was an error. The Landlord testified again that their daughter will be moving into the rental unit.

The Tenant testified that the Landlord's daughter already lives in one of the Landlord's rental units and that they do not need this rental unit.

The Landlord testified that their daughter does currently live in another unit owned by the Landlord but that the unit is only a one-bedroom and that their daughter has reached a point in their life where they require more space. The Landlord testified that

this rental unit is the only two-bedroom unit they own in this part of town, that that is why they issued Notice to end this tenancy for their daughter's use of the property.

The Tenant testified that the Landlord, as a corporation, should not be allowed to use this portion of the Act to end tenancy, as it is not in line with the spirit of the law.

The Landlord testified that they and their brother run a family corporation, and the Act allows them to use this section of the Act to end a tenancy for their family's personal use of the property.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord, that they served the Notice to the Tenant by Canada Post Registered mail sent on November 14, 2022. I find that the Tenant was deemed to have received this mailing, five days later, on November 19, 2022, pursuant to section 90 of the *Act*.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until December 4, 2022, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on November 29, 2022, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

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.

I have reviewed all of the documentary evidence and testimony before me, and I find there is insufficient evidence before me to indicate that the Landlord had issued the Notice with ulterior motives.

In the absence of evidence to show a dishonest motive of the Landlord, I accept it in good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice dated November 14, 2022.

Pursuant to section 55 of the Act, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. Section 55(1) of the Act states the following:

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.*

I have reviewed the Notice, and I find the Notice dated November 14, 2022, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on April 30, 2022. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The Tenant's Application to cancel the Notice, dated November 14, 2022, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on April 30, 2022. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 13, 2023

Residential Tenancy Branch