



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the landlord's property manager / interpreter (the "manager") and counsel for the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness G.G. (the "realtor") who provided affirmed testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenant's application for dispute resolution and evidence were served on the landlords via registered mail. No issues with the timing of service were

raised in the hearing. I find that the landlords were served with the tenant's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

The landlord testified that the her evidence was served on the tenant via registered mail on April 6, 2023. Counsel submitted that the landlord's evidence was received on April 11, 2023 and that she had time to review that evidence. Counsel submitted that some of the evidence is in Chinese and that she cannot read it and so it should be excluded from consideration.

I find that while the landlord's evidence was received by the tenant less than seven clear days before this hearing contrary to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, the tenant is not prejudiced by its inclusion because counsel had time to review it prior to this hearing.

I decline to exclude the landlord's untranslated evidence, which primarily consists of flight confirmations and boarding passes. While some of the documents are in Chinese, the airport codes are in English and numbers representing dates are the same as used in Canada and can be understood without difficulty. I note that I cannot read Chinese and my consideration of the landlord's evidence is limited to what can be understood from that position.

Preliminary Issue- Amendment

A portion of the address of the subject rental property was accidentally repeated on the tenant's application for dispute resolution. In the hearing both parties confirmed the correct address of the subject rental property. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to delete the repeated portion of the address of the subject rental property.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Evidence/Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on November 15, 2020,
- monthly rent in the amount of \$3,800.00 is payable on the first day of each month,
- a security deposit of \$1,900.00 was paid by the tenant to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") was posted on tenant's door on November 25, 2022. Counsel confirmed receipt of same. I find that the tenant was served with the Notice in accordance with section 88 of the *Act*.

The Notice was entered into evidence, is signed by the landlord, is dated November 25, 2022, gives the address of the rental unit, states that the effective date of the notice is January 31, 2022, is in the approved form, #RTB-32, and states the following grounds for ending the tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse

The landlord testified that she wants to move back into the subject rental property; however, that was not her original plan. The landlord testified that her son is currently attending a university in Toronto and is graduating this year. The landlord testified that her original plan was to sell the subject rental property and move to Toronto to be close to her son. The landlord entered into evidence a listing agreement for the subject rental property signed on April 26, 2022 for the period of April 28, 2022 to December 31, 2022 (the "listing agreement").

The landlord testified that the subject rental property proved difficult to sell and that in November of 2022 she decided not to sell the subject rental property and to move into

it. The landlord testified that after graduating, her son will now relocate to the subject rental city instead of residing in Toronto.

The landlord testified that she did not bother terminating the listing agreement with the realtor because it was about to expire at the end of December 2022. The landlord testified that she told the realtor that she didn't want to sell the property anymore around November 20, 2022. The landlord testified that the subject rental property was not shown to prospective buyers after that point.

The realtor testified that the landlord signed the leasing with himself. The realtor testified that the landlord told him that she didn't want to sell the subject rental property anymore on November 25 or 26, 2022. The witness testified that he did not terminate the contract because: (1) it was about to expire (2) he still wanted to sell the subject rental property (3) the live listing was good advertising for himself as a realtor. The realtor testified that he stopped showing the subject rental property after the landlord advised him that she no longer wanted to sell the subject rental property.

The landlord testified that at the time the Notice was served, she was under lockdown in China which ended at the end of December 2022. The landlord testified that after lockdown ended, everyone wanted to travel and it was very difficult to book a flight. The landlord testified that she tried to book flights to the subject rental city everyday and was finally successful at the end of February 2023. The landlord testified that she landed in the subject rental city on March 1, 2023. The landlord entered into evidence boarding passes, written in Chinese and English, which state that the landlord departed China on February 28 and landed in the subject rental city on March 1, 2023. I accept the veracity of the boarding passes and find that the landlord landed in the subject rental city on March 1, 2023.

The landlord testified that she is renting a room in the subject rental city until she can take possession of the subject rental property. The landlord entered into evidence a tenancy agreement between herself and a third-party landlord dated February 1, 2023. The tenancy agreement states that the tenancy starts on March 1, 2023 and is for a fixed term ending on May 30, 2023 and that at the end of this time, the tenancy will continue on a month-to-month basis.

The landlord testified that she would not have been able to move into the subject rental property on the effective date of the Notice, that being January 31, 2023 because she could not get a flight to the subject rental city at that time.

Counsel submitted that the landlord was not acting in good faith when the Notice was served on the tenant. Counsel submitted that on October 27, 2022 the manager sent the following text to the tenant:

The owner need to sell the house. The need the money to buy a place for their son in Toronto. They like to give you two month free if you could move out ASAP to let them sell the house easier. How do you think?

The above text was entered into evidence as was the responding text from the tenant dated October 27, 2022 which states:

Thanks [manager], but not I cannot do that. There are no good options out there at this point.

Counsel submitted that:

- the landlord served the Notice a few weeks after the tenant declined to move out of the subject rental property,
- based on the evidence it is clear that the landlord sought to remove the tenant from the subject rental property for the purpose of sale,
- the landlord's evidence doesn't show that the landlord intended to move into the unit at the time the Notice was served,
- the landlord didn't move back to the subject rental city until March 1, 2023 and the flights for same were only booked shortly before,
- the landlord did not provide any documentary evidence to support her statement that her son plans on moving to the subject rental city,
- the listing of the subject rental property for sale was not removed until the landlord received the tenant's application for dispute resolution,
- the landlord's evidence doesn't show that the landlord, in good faith, intended to move into the subject rental property on the effective date of the Notice,
- good faith requires an honest intent with no dishonest motive, which is not the case here, and
- the landlord had an ulterior motive to ending this tenancy, that being vacant sale of the subject rental property.

The landlord testified that:

- the subject rental property is her home and the only property she owns in Canada,
- the COVID lockdown in China prevented her from moving in on the effective date

of the Notice, and

- her son will soon graduate and will return to the subject rental property to reside with her.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit.

Residential Tenancy Policy Guideline 2A states that:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court (*Gichuru*) 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)).

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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.

I find that the October 27, 2022 text message clearly shows that a few weeks before the Notice was served, the landlord wanted vacant possession of the subject rental property for the purpose of sale. The manager clearly requested the tenant to vacate the subject rental property to make the sale of the property easier. I find that the October 27, 2022 text message raises the question as to the good faith of the landlord in serving an eviction notice less than a month after the tenant rejected the offer to move out.

Based on the landlord's evidence I find that the landlord is currently in the subject rental city and wants to occupy the subject rental property for her own use; however, I am not satisfied that at the time the Notice was served the landlord intended in good faith to

occupy the subject rental property. I am not satisfied that the landlord's change of mind was unrelated to the tenant's refusal to accept the October 27, 2022 text message offer. I find that while the tenant's refusal to accept the October 27, 2022 text message offer may not have been a the primary reason for serving the Notice, it was a factor that contributed to that decision.

As found in *Guichuru*, good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. As such I find that the landlord has not met the good faith requirement set out in section 49(3) of the *Act*. I therefore find that the Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*.

Counsel made additional submissions regarding waiver of the Notice. As I have already determined that the Notice is cancelled and of no force or effect I decline to consider those submissions.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00 from rent on one occasion.

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 19, 2023

Residential Tenancy Branch