



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Landlord's Agent, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice served by email on October 31, 2022, Tenant confirms receipt on October 31, 2022; and,
- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on November 28, 2022, the Landlord's Agent confirmed receipt, deemed served on December 3, 2022.

Pursuant to Sections 88, 89 and 90 of the Act I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 1, 2021. The fixed term ended on March 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,200.00 payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was December 31, 2022.

The Landlord's Agent testified that the Landlord wants to move back into her rental unit or possibly sell the unit because of circumstances she has with her business. This year the Landlord's daughter finishes high school, and the Landlord must decide either she has to move back into the unit because the rent is very high where she is living now, or she needs to sell the rental unit to pay the settlement for a lawsuit.

The Tenant testified that the Landlord does not have the good faith intention to move into the rental unit. The Landlord has the rental unit up for sale and her real estate agent has open houses to show the rental unit on an on-going basis.

In September 2022, the Landlord sent the Tenant an email saying she wanted to discontinue their lease because it would be easier to sell the apartment if it was not

tenanted. The Landlord issued the Two Month Notice on October 31, 2022 stating she would be moving into the rental unit.

The real estate agent told the Tenant that the priority is to sell the rental unit. The Tenant has had at least two opportunities with other rental units, but the Landlord has not been helpful with responding to references. The Landlord also was not agreeable in providing him with his one-month compensation ahead of time so he could use this money to secure a new rental. The Tenant lost both prospective rental units.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: landlord's use of property

49 ...

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

(i) *not earlier than 2 months after the date the tenant receives the notice,*

(ii) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*

(iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*

...

(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.*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (8) *A tenant may dispute*
 - (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*
 - (b) *a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.*

...

The Tenant was served with the Two Month Notice on October 31, 2022. I find that the Two Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on November 15, 2022 which was within the 15 days after receiving the Two Month Notice.

The Tenant claims that the Landlord did not issue the Two Month Notice in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

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.

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. 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.

The Landlord wrote the Tenant that it would be easier to sell the rental unit if the unit was not tenanted. The Landlord has had active real estate activity going on in the rental unit, and the real estate agent told the Tenant that the priority is to sell the unit. The Landlord did not provide any evidence about her plans to move into the rental unit. Based on the totality of the evidence from both parties, I find the Landlord has not proven on a balance of probabilities her good faith intention that she will move into the rental unit. I cancel the Landlord's Two Month Notice, and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover his application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 26, 2023

Residential Tenancy Branch