



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

This hearing was set to deal with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property.

Both parties appeared and/or were represented at the hearing and the parties were affirmed.

I confirmed the tenants sent their proceeding package and evidence to the landlords via registered mail and the landlords received the registered mail packages.

I also confirmed that the landlords did not submit/serve evidence prior to the hearing and that they would be providing their position orally during the hearing and relying upon documents already submitted as evidence by the tenants.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

On another note, the tenants named a third co-tenant on their application; however, I have excluded that person as a named tenant after reviewing the tenancy agreement.

Issue(s) to be Decided

Should the Two Month Notice be upheld or cancelled?

Background and Evidence

The tenancy for the subject rental unit started in August 2016. The tenants paid a security deposit of \$1050.00 and a pet damage deposit of \$1050.00. The rent was originally set at \$2100.00 payable on the first day of every month. After rent increases, the tenants are currently required to pay rent of \$2375.00 per month.

The Two Month Notice that is the subject of this dispute was issued by the landlords on November 24, 2022 and emailed to the tenants. The tenants did not take issue with service by email and I proceeded on the basis it was sufficiently served. The tenants filed to dispute the Two Month Notice within the time limit for doing so.

The subject Two Month Notice has a stated effective date of January 31, 2023 and indicates the reason for ending the tenancy is because the landlord or landlord's spouse intends to occupy the rental unit.

Prior to issuance of the subject Two Month Notice, I heard of the following sequence of events:

- The landlords issued a previous Two Month Notice to the tenants on August 24, 2022 with a stated effective date of October 31, 2022 and the reason for ending the tenancy was that the landlord or the landlord's spouse intended to occupy the rental unit.
- The tenants did not dispute the Two Month Notice and proceeded to look for alternative living accommodation. The tenants withheld rent that was otherwise due on October 1, 2022 as compensation for receiving the Two Month Notice.
- A prospective landlord called the landlords for a reference check and during that conversation the prospective landlord informed the landlords that he considering renting a unit to the tenants for \$3500.00 per month. Shortly after that the landlord reached out to the tenants to explore possible options for the tenants to continue to reside in the rental unit.
- The landlord and tenants met on October 16, 2022 and during that meeting the landlord proposed the parties enter into a new tenancy agreement, the landlord would make certain repairs, and the landlord would not sell the rental unit in the near future in exchange for the tenants paying rent of \$3400.00 per month.
- The landlord prepared a new tenancy agreement and provided it to the tenants for their signature on October 17, 2022.
- The tenants did not sign the new tenancy agreement but contacted the Residential Tenancy Branch for information.

- The tenants wrote a letter to the landlord on October 23, 2022 and emailed it to the landlord on October 24, 2022. The tenants provided a summary of their recollection of the October 16, 2022 meeting and requested the following:

Since this meeting we have done our due diligence into our legal rights. In this regard, we are requesting the following:

1. RBT-32 Notice to end tenancy be rescinded, as this no longer applies.
 2. 3 month's notice of rent increase (November, December and January) for the current applicable percentage (2%) as per the BC Residential Tenancy Act. This amount will be added onto the amount we are currently paying. This will commence on February 1, 2023.
- On October 26, 2022, the landlord responded to the tenants' letter by way of an email. The landlord wrote his recollection of their October 16, 2022 meeting as being (with names omitted by me for privacy purposes):

We received your letter and we understand that you needed legal clarification of your rights as a tenant.

However, your recollection of our conversation: "At the meeting we were advised that [REDACTED] would not be moving into the residence because their family situation had changed" does not align with my recollection of our conversation and our verbal agreement.

I told you at our meeting that we are less motivated to move in, then we were in August when we served RBT-32 notice, since our son got employment with the city of [REDACTED]. When you asked what I am proposing, I said that you have the option to move out, as stipulated in the move out notice, or negotiate with us a new agreement that would work for both. After that we discussed/negotiated the rent. At one point during this negotiation, you asked me: what if we do not agree about the rent? And I answered that in that case I would apologize for taking your time and that we get back to where we were before we started our meeting and you keep preparing to move out by the end of October and we prepare to move in after November 1st.

Therefore, you have not been forced into a new negotiated agreement, but given an option vs moving out.

In conclusion, my point is that there is a significant difference between 'would not be moving into' and 'less motivated to move into' (but willing to move into if new negotiated agreement is not acceptable for you) and that the legal advice that you received may not be the same if complete and accurate record of what we discussed was presented.

Now in hindsight, I see how my intentions may be misunderstood and it would be better that I did not initiate our meeting on October 16th. You would move out as you already planned and we would move in. If you still have a place to move to by the end of October, we would be happy to move in on November 1st.

- The landlord then referenced the tenant's letter and in response to the two requests the tenants made in their letter, the landlord wrote:

1. You requested that we rescind August 24th RTB-32 Notice to End Tenancy. Rescinding this notice means that everything stipulated in the notice is null, including one-month free rent. Your payment of October rent, due immediately, would confirm that the notice is rescinded.
 2. You requested a three month notice of rent increase. We will follow up with a notice pending your action regarding item number 1.
- After receiving the landlord's email of October 26, 2022, the tenants paid the rent for October 2022.
 - On October 29, 2022 the landlords issued a Notice of Rent Increase to increase the rent to its current amount of \$2375.00 starting on February 1, 2023.
 - On November 24, 2022 the landlords issued the subject Two Month Notice. The tenants filed to dispute the Two Month Notice.

Landlord's reasons for issuing the subject Two Month Notice

During the hearing, the male landlord argued that he did not revoke the August 24, 2022 Two Month Notice and wanted to enforce it. However, the landlord acknowledged that he had communicated to the tenants that he would consider it revoked. The landlord explained that he made such statements to the tenant to avoid further dispute over the issue of revocation. I asked the landlords if they wanted to spend more of the hearing time on arguing whether the August 24, 2022 notice was revoked or whether they wanted to use the hearing time to deal with the November 24, 2022 Two Month Notice. The female landlord responded that they would like to move on and deal with the November 24, 2022 Two Month Notice.

The landlords submit they issued the subject Two Month Notice for the same reason they issued the previous Two Month Notice: because they want to move into the rental unit.

The landlords explained the reason they want to move into the rental unit is because they intend to renovate their current home and while it is being renovated they need to live somewhere. After the renovations are complete the landlords will either move back to their current home or their son will move into the family home as it is close to his work location. The landlord testified that they want to support their son financially and that he is facing paying rent of over \$3000.00 when he could move into the family home for less.

The landlords explained that is why when he proposed the monthly rent of \$3400.00 to the tenants so that they may continue to reside in the rental unit and that the increased monthly income would allow the landlords to support their son financially.

The landlords submitted they do not have a bad faith intention to end the tenancy. To illustrate the landlord's good faith intentions toward the tenants, the landlords stated that they had a previous tenancy agreement with the tenants for a different house the landlords owed and when the subject tenancy started the rent was set below market value. Also, the landlords deliberately waited until November 2022 to issue the subject Two Month Notice so that their tenancy would not end during the holiday season as it would have if they had issued another Two Month Notice in October 2022.

Tenant's position

The tenants are of the position the landlords are not acting in good faith and that the landlords are only motivated to increase the rent they are receiving from the rental unit as demonstrated by the landlords' willingness to continue to rent to the tenants if they had entered into a new tenancy agreement for much more rent. The current rent payable for the rental unit is below market value despite the annual allowable rent increases the landlord has imposed.

Analysis

I have been presented copies of two Two Month Notices. With respect to the August 24, 2022 Two Month Notice, the tenants were of the view it was revoked as evidenced by their payment of rent after their re-negotiation discussions. The landlord's position concerning withdrawal or revocation was less clear. In reading the October 26, 2022 email the landlord wrote it appears clear to me that the Two Month Notice of August 24, 2022 would be revoked by payment of the October 2022, which the tenants swiftly made. The tenants relied upon this representation by the landlord in his October 26, 2022 email and acted upon it by making the payment. The landlord then issued a Notice of Rent Increase on October 29, 2022 which I find is inconsistent with the landlords' position the tenancy was to end on October 31, 2022. Therefore, I find the landlords are estopped from trying to argue the Two Month Notice issued on August 24, 2022 was not revoked and that the notice remains enforceable.

As for the subject Two Month Notice dated November 24, 2022, I find as follows.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The reason for ending the tenancy, as indicated on the Two Month Notice, is consistent with section 49(3) of the Act which permits a landlord to end a tenancy where:

(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

[My emphasis added]

In this case, the landlords have put forth that they intend to occupy the rental unit.

The tenants called the landlord's good faith intention into question, pointing to the landlords' previous attempt to significantly increase the rent under a new tenancy agreement, which the tenants declined to agree to shortly before issuance of the subject Two Month Notice.

Residential Tenancy Policy Guideline 2A provides information and policy statements with respect to ending a tenancy for landlord's use of property. Under the heading "Good Faith", the policy guideline provides:

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.

[My emphasis added]

It is before me to determine whether the landlords have demonstrated that they had only a good faith intention to end the tenancy when the subject Two Month Notice was issued on November 24, 2022.

The landlords testified that they will be moving into the rental unit so that they may renovate their existing home. However, I find the landlord's submission is not sufficiently supported by evidence or persuasive considering the following factors:

- The landlords did not describe the scope of renovation work they intend to perform on their existing residence to demonstrate they need to occupy the rental unit for at least six months to accommodate renovations at their current home.
- The landlords did not provide any evidence suggesting they have applied for permits to make any significant renovations to their current residence.
- The landlords did not provide any estimates from building supply stores or contractors to demonstrate they truly intend to make such significant renovations to their current home that they require the rental unit to be their residence for at least six months while renovations are underway at the current home.
- The landlords did not call their son to testify in support of their position that he may move into the landlord's current residence.

When I consider the above, coupled with the fact that the landlords have already demonstrated that they would be willing to continue renting to the tenants if they paid much more in rent, I find I am unsatisfied the landlords have met their burden to prove that they wish to end the tenancy for good faith reasons only, and without any ulterior

motive. Therefore, I grant the tenant's request for cancellation of the Two Month Notice and the tenancy continues at this time.

The tenants did not request recovery of the filing fee they paid for this application and I make no such award.

Conclusion

The Two Month Notice is cancelled and the tenancy continues at this time.

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 05, 2023

Residential Tenancy Branch