



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions.

The landlord confirmed service of the tenant's application. The tenant confirmed service of the landlord's documentary evidence package. No documentary evidence was on file from the tenant. The landlord testified he also did not receive any documentary evidence from the tenant. The tenant insisted that he sent evidence by registered mail to both the landlord and the Residential Tenancy Branch. The tenant did not provide any proof of service of the alleged evidence submissions. As this matter dealt with a Notice to End Tenancy, the effective date of which was almost 3 months ago, I found that adjourning this matter would be prejudicial to the landlord. The hearing proceeded as scheduled.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The rental unit is a mobile home in a manufactured home park. The tenant has resided in the park since 2012. In December 2015 there was a major sewer backup in the tenant's original unit rendering it uninhabitable. The current unit which is subject to this

dispute was made available to the tenant as the sewer backup was of no fault of his own.

The landlord served the tenant with a Two Month Notice on November 18, 2022 with an effective date of January 31, 2023. The Two Month Notice was issued on the following ground(s):

- A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

The landlord submitted documentary evidence showing himself and his wife as the registered directors of the corporation. The landlord testified that prior to the rental unit being made available to the tenant, it was utilized as accommodation by himself and for out-of-town workers. The landlord testified that he lives in Nanaimo which is a three-hour drive away from the mobile home park. The landlord testified that he is very hands on and often works and stays there. He also brings workers with him as they are difficult to find in the area. As he doesn't currently have a place to use for himself at the park he and his workers have to stay at hotels which can get very expensive.

The tenant is disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenant submits that he has lived in the park for a long time without any major issues and he was not expecting to lose his place without reason. The tenant argues that the rental unit is supposed to be used for family and not for workers. The tenant also submits that the landlord currently uses trailer #5 for himself. The tenant also argued that the rental unit in question is not owned by the landlord but rather is subject to a tax sale. The tenant did not submit any documentary evidence in support of this argument.

In reply, the landlord submits that the rental unit will be primarily used as accommodation for himself and not just workers. The landlord testified that trailer #5 referred to by the tenant has been rented since last summer. The landlord testified that the corporate landlord has owned the tenant's unit for over 8 years and pays property taxes for it annually. The landlord did not submit any proof of ownership documentation as he did not think this was an issue.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of

the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Pursuant to section 49(4) of the Act, a landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

Under this section, a "**family corporation**" means a corporation in which all the voting shares are owned by:

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

The landlord submitted documentary evidence in support of the corporation being owned by himself and his wife. Although no documentary evidence was submitted by either party in regards to ownership of the rental unit, I accept the landlord's testimony that the corporation owns the rental property. The tenant could have raised this issue prior to the hearing and also did not provide any evidence in support of his argument that the property was subject to a tax sale.

Residential Tenancy Policy Guideline #2 "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I accept the landlord's testimony and find the landlord intends in good faith to occupy the property primarily as accommodation for himself when on site conducting park

operations. The tenant did not dispute that the landlord needs a unit for this purpose but rather argued that the landlord has a different unit he is currently using. I accept the landlord's testimony that this other unit referred to by the tenant is currently rented and the tenant's unit was used for park operations in the past.

I find that the landlord has provided sufficient evidence to justify that it has a good faith intention to issue the Two Month Notice. The tenant's application to cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As rent for the month of April 2023 has been paid, the order of possession shall be effective April 30, 2023.

Conclusion

I grant an Order of Possession to the landlord effective **April 30, 2023**. 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 20, 2023

Residential Tenancy Branch