



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC

Introduction

This application for dispute was filed by the Tenant on December 20, 2022, under the Residential Tenancy Act (“the Act”) to cancel a One-Month to End Tenancy for Cause, (the “Notice”) dated December 15, 2022, and for an order for the Landlord to comply with the Act. The matter was set for a conference call.

This matter initially proceeded by way of a hearing on April 13, 2023, an Interim Decision for that hearing was issued on April 13, 2023, adjourning the proceedings to a written submission proceeding, in lieu of further oral testimony, scheduled for May 11, 2023.

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.

This Written Submission Hearing decision should be read in conjunction with the Interim decision dated April 13, 2023.

Issues to be Decided

- Should the Notice dated December 15, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?

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 Tenant recorded on their application that their tenancy began on April 1, 2021, that they pay rent in the amount of \$1,300.00 a month and that the Landlord collected a \$650.00 security deposit at the outset of this tenancy.

The Tenant submitted that the Landlord personally served the Notice to the Tenant on December 17, 2022. The Notice recorded that the Tenant was required to vacate the rental unit as of March 1, 2023. Both the Landlord and the Tenant submitted a copy of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

- The child of the Landlord or the landlord's spouse
- The father or mother of the landlord or the landlord's spouse

The Landlord testified that they will be reclaiming the basement of their home for the personal use of their family. Specifically, to house their father whose declining health makes it difficult for them to go up and down stairs. The Landlord submitted that the basement unit has access to the upper unit, in which they live, that will allow for them to easily move between the two living areas to care for their father.

The Tenant submitted that there is at least one other unit on the property with the same ease of access to the Landlord's unit and that they could have ended that person's tenancy and not theirs. The Tenant submitted that the Landlord has been trying to end their tenancy for a while and that this is just another attempt to get them out so they can re-rent at a higher rate.

The Landlord testified that they will be reclaiming the basement of their home for the personal use of their family. Specifically, to house their father whose declining health makes it difficult for them to go up and down stairs.

The Tenant has submitted the Landlord's father has been in Canada for several months under a visitors' visa, and that Canadian visas allow visitors to stay for up to 6 months. The Tenant submits that due to the stay limitation on the Landlord's father's visa, there is no way they could live in the rental unit for the required 6 months.

The Landlord has submitted that their father has a "Super Visa", that allows the holder to stay in the country for up to five years at a time, and that there is sufficient time to meet the six-month occupation requirement set out under the *Act*. The Landlord submitted a seven-page written explanation of the Super Visa program and a copy of the Landlord's father's visa card into documentary evidence.

The Tenant submitted there are other comparable rental units on the property that the Landlord could use to house their father, instead of their rental unit.

The Landlord submitted that they choose this unit as it has ground-level access and offers the ability for the Landlord to access the rental unit from their unit.

The Tenant submitted that the Landlord has not provided sufficient evidence of the medical condition of their father's need for a ground-level unit.

Analysis

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

I accept the documentary evidence provided by the Tenants, that the Landlord personally served the Notice to end their tenancy to them on December 17, 2022.

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 January 2, 2023, to dispute the Notice. In this case, The Tenants filed to dispute the Notice on December 20, 2022, within the required timeline.

The Tenants' 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:

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.

The Landlord has indicated that they intend to reclaim the use of the basement suite in order to use this ground floor suite, with access to the main house to house their aging father. The Residential Tenancy Policy Guideline 2 also addresses the "Reclaiming a rental unit as living space" as follows:

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room or using a carriage home or secondary suite on the residential property as a recreation room.

The Tenant has submitted the Landlord's father's visa would expire before the required six months of occupation could be fulfilled. The Landlord has submitted that their father

has been granted a “Super Visa”, that allows the holder to stay in the country for up to five years at a time. Which would allow the Landlord’s father sufficient time to meet the six-month occupation requirement set out under the *Act*. I have reviewed the submission of the Landlord on this point, and I acknowledge that the Canadian Government implemented a new visa program in July 2022, that grants 10-year, multiple-entry visas, to the parents or grandparents of Canadians, allowing them to stay in Canada for up to 5-year at a time. I accept the Landlord’s testimony supported by their documentary evidence that their father holds a Super Visa for their entry into Canada and that there is sufficient time left on that visa to fulfill the required occupation of the rental unit under the *Act*.

The Tenant has also submitted there are other comparable rental units on the property that the Landlord could use to house their father and that the Landlord could have ended a different renter’s tenancy to house their father. I find this to be a moot point as a landlord has a right to select any rental unit they own, that they deem most appropriate to house themselves or their close family member.

Finally, the Tenant has submitted that the Landlord has not provided sufficient evidence of the medical condition of their father, and their fathers need to have a living area that is at ground level. Again, I find this to be a moot point as there is no requirement under the *Act* that a Landlord can only take a rental unit back for their own use if there is a medical need. I acknowledge that the Landlord offered the medical needs of their father as the reasons why selected this particular unit; however, as stated above, a landlord has a right to select any rental unit they own, that they deem most appropriate to house themselves or their close family member.

After reviewing all of the submissions and the documentary evidence that I have before me, I find there is insufficient evidence to prove to me, that the Landlord had issued the Notice with ulterior motives.

In the absence of sufficient evidence, I must accept it on 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 December 15, 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.

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act* and that the Landlord is entitled to an order of possession.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an Order of Possession effective not later than 1:00 p.m. on May 31, 2023. 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.

Conclusion

The Tenant's Application to cancel the Notice, dated December 15, 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 May 31, 2023**. 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: May 12, 2023

Residential Tenancy Branch