



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **OPL**

Tenants: **CNL, DRI, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenants.

The landlords applied for: An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord's Use, pursuant to sections 49 and 55.

The tenants applied for:

An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;

An order to dispute a rent increase above the amount allowable under the Act pursuant to section 41; and

Authorization to recover the filing fee from the other party pursuant to section 72.

Both landlords and both tenants attended the hearing. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The tenants acknowledged being served with the landlord's Notice of Dispute Resolution Proceedings package. The landlords testified they did not get the tenants' Notice of Dispute Resolution Proceedings.

The tenants testified that they sent the landlord AL a copy of the Notice of Dispute Resolution Proceedings package via registered mail to the address shown on the notice to end tenancy on January 11, 2023. The tracking number for the mailing is recorded on the cover page of this decision. The tenants testified that the package was returned to them, unclaimed. I deem the landlord served with the Notice of Dispute Resolution Proceedings package on January 16, 2023, the fifth day after it was sent via registered mail in accordance with sections 89 and 90 of the Act.

At the commencement of the hearing, I advised the parties that the issue of whether to uphold the notice to end tenancy for landlord's use was the primary issue before me. I deemed the issue of disputing the rent increase as not being related to the primary issue and I dismissed this portion of the tenant's application with leave to reapply at the commencement of the hearing in accordance with rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Has the landlord shown good faith in issuing the notice to end tenancy for landlord's use?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The rental unit is an upper unit in a house with 3 separate units. The landlord personally served the tenant LG with a 2 Month Notice to End Tenancy for Landlord's Use on December 30, 2022 and the tenant filed an application to dispute it on January 3, 2023.

The notice to end tenancy states the reason for ending the tenancy is because the rental unit will be occupied by the landlord or the landlord's close family member. On this older version of the form, the identity of the eventual occupant is not clear.

The landlord NN gave the majority of the landlord testimony, using her son, co-landlord AL as an interpreter. She testified that she and her son will occupy the unit once the tenants vacate it. When I asked the landlord NN where she currently lives, NN responded that she lives at 1039 (street name hidden for privacy). The house was sold in March of 2023, however.

I then asked how she can live at 1039 if it was sold and NN changed her testimony to say she lives at 1126 (street name hidden). This house is owned by her boyfriend. NN then testified that 1126 is actually a religious temple and that the temple is owned by her boyfriend. When asked how she can reside in a temple, NN went back to saying she lived at 1039. When asked how she can live at 1039 if it was sold back in March, she testified she lives with her son, the co-landlord at his address.

Once specifying she lived with her son at his home, NN then retracted her statement saying she lives at 1126 and only goes to that address to pray. It was her misunderstanding.

Co-landlord AL testified that he lives at the landlord address noted on the notice to end tenancy with his wife and his mother. AL testified that he is the owner of the rental unit, not his mother, NN. Despite this, AL sent a text message to the tenants dated November 20, 2023, telling the tenants that NN is the owner and that their rent is increasing to \$2,800.00 per month. He goes on to say *"I send you a few 3 bedroom suites for rent with a price for you to look at"*.

Later AL texts the tenant saying, *"owner NN says if you want my email and cannot pay \$2,800.00 then we will give you 1 month notice to move out by January 31, 2023, so our family from Vietnam come here and have suite to stay. If you pay \$2,800 per month, then we will let you stay"*.

When I asked AL who the family from Vietnam was, AL first said it was his own family, after consulting with his mother during the hearing. Later in the hearing, AL said the "family" was his wife's family from Vietnam. Both mother and son, co-landlords will live in the rental unit and AL's wife will remain in the condominium the wife owns – together with family from Vietnam.

The tenants testified that NN lives at 1039 with her common law spouse/boyfriend. The tenants have lived right next door to NN and her boyfriend since the tenants moved in back in 2012. The tenants have always initiated rent increases over the years, never the landlord.

When the landlord texted them, asking to raise the rent from \$2,025.00 to \$2,800.00, they refused, as the landlord did not seek to raise their rent in accordance with the Act. Their refusal led to the landlord trying to end their tenancy, supposedly for the landlord to move their family from Vietnam in.

The tenants acknowledge that the amount of rent they pay is less than market value. In ending their tenancy, the landlords seek to find another tenant willing to pay more rent and allow them to make more money.

Analysis

I find the tenants filed their application to dispute the landlord's 2 Month Notice to End Tenancy for Landlord's Use within the 15 days after being served with it, in accordance with section 49(8) of the Act.

The tenants question the landlord's "good faith" in ending their tenancy. Good faith is examined in Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member. It states:

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.

In the dispute before me, both landlords gave contradictory and misleading testimony. The landlord NN, gave conflicting testimony regarding where she currently resides; it was only after I questioned how she lives in a) a property she sold in March 2023, then b) a temple owned by her boyfriend – that NN came up with the answer that she lives with her son, the co-landlord of the rental property. It is notable that her son, co-landlord AL didn't answer the question of where NN lived when I asked him directly. I found it odd that he had to ask NN for the answer if they lived together in the same household. I found both landlords lacked credibility in their testimony.

Further, when I asked both landlords who the "family" from Vietnam that would live in the rental unit was, the first answer was AL's family. Then it was his wife's family. Then AL said he and his mother would live in the rental unit and his wife and her family from Vietnam would live in the wife's condominium in a different city. AL provided no insight as to why he would move away from the apartment he shares with his wife to go live in the rental house with his mother. Once again, I found the landlords lacked credibility in their responses. The changes to the story based on the senselessness of the landlord's answers made it unlikely to me that the landlord was being truthful.

Lastly, the text messages clearly indicated that the landlord sought to increase the tenants' rent in a manner inconsistent with the Act. When the rent increase was refused, the tenants were served with the notice to end tenancy for landlord's use. Specifically, I turn to the text dated December 29, 2022 where the landlord states the following,

"Owner NN says, if you cannot pay \$2800 starting January 1, 2023, then we will give you 2 months notice to end tenancy. That means your family will move out February 28, 2023. This is 2 months notice. You can still pay \$1015 for both January 2023 and February 2023. Therefore, please reply to me as soon as possible, your family want to stay in NN's homes for rent or your family wants to move out?"

Despite the landlord's assertion that the notice to end tenancy is not related to the increased rent sought, I find that the two are clearly related. Based on the evidence before me and the lack of credibility of both landlords' testimony, I find the landlords did not show good faith in ending the tenancy for landlord's use. I find that the intent of the landlords was to derive rent from their rental unit greater than the amount the tenants were paying. If the tenants were unwilling to pay their illegal rent increase, the landlord

would find others willing to pay it. As stated in the policy guideline, *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.*

I find the landlord did not act in good faith when issuing the 2 Month Notice to End Tenancy for Landlord's Use. As such, I find the Notice is of no force or effect and I cancel it.

The tenants were successful in their application, and they may recover the \$100.00 filing fee. In accordance with the offsetting provision of section 72, the tenants may reduce a single payment of rent owing to the landlord by \$100.00 in full settlement of the award.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the Act.

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 02, 2023

Residential Tenancy Branch