



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

On January 6, 2023, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

Tenant M.N. attended the hearing, with M.K. attending as an advocate for the Tenants. The Landlord attended the hearing as well, with F.P. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord did not dispute that he received the Notice of Hearing package from the Tenants on January 13, 2023, and he did not raise any other concerns with service. As such, I am satisfied that the Landlord has been duly served the Tenants' Notice of Hearing package.

Service of the parties' evidence was addressed and there were no concerns with service, with the exception of the Tenants' late, additional evidence that was not served to the Landlord. As such, all parties' evidence, except for the Tenants' late, additional evidence, will be accepted and considered when rendering this Decision. The Tenants'

late, additional evidence will be excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2020, that rent was currently established at \$2,000.00 per month, and that it was due on the first day of each month. A security deposit of \$1,000.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was served to the Tenants by hand on December 31, 2022, and the Tenants indicated on their Application that they received it that day. The reason the Landlord served the Notice is because "The landlord or the landlord's

spouse” would be occupying the rental unit. The effective end date of the tenancy was noted as March 5, 2023, on the Notice.

The Landlord advised that he suffered from a heart attack two years ago, which led to his inability to work. He referenced medical documentation submitted to support this condition. As such, this has led to financial difficulties as he is solely reliant on income from his rental properties. However, he did not submit any documentary evidence to substantiate his dire financial situation. As the rental unit was the most affordable of his properties, the Notice was given so that he could move in there with his girlfriend. In addition, he testified that his mother would move in as well so that she could take care of him.

He testified that he is currently living in the 380 square foot garage while waiting the outcome of this Decision. He stated that the rental unit has two bedrooms, and that his girlfriend would also move in with him. However, when he was questioned about the alleged plans for his mother to move in, he then stated that plans for her to move from another country would only be initiated once he had possession of the rental unit back.

He was also questioned about a separate tenancy agreement that he submitted as documentary evidence, as this agreement for a different property included a vacate clause in it where the Landlord indicated that he would be moving into that property as of November 1, 2023. When he was asked what his plans were for this if his alleged plan was to move into the rental unit as of March 5, 2023, as per the Notice, he advised that he was not an informed Landlord, and that this vacate clause was a mistake.

M.K. advised that there was a history of tension between the Landlord and Tenants that stemmed from an incident where the Landlord requested a rent increase of \$500.00. Ever since this dispute, he submitted that the Landlord had been attempting to end the tenancy. He referenced emails submitted as documentary evidence to demonstrate the hostile demeanour of the Landlord. He referenced a previous Decision, dated September 14, 2022, where it was determined that a previous Two Month Notice to End Tenancy for Landlord’s Use of Property was cancelled because it was determined that the Landlord likely served it due to the disagreement over the \$500.00 rent increase.

F.P. made submissions regarding the relationship between the Landlord and the Tenants, and she stated that there was “hostility on both sides”.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit. I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

"The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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."

When reviewing the totality of the evidence and testimony before me, I acknowledge the submissions from the Landlord about his desire to move into the rental unit, and while I do not doubt his alleged medical condition, I note that there is little documentary evidence that actually corroborates this condition. Regardless, he stated that the primary reason for moving into the rental unit was financial; however, he did not provide any documentary evidence to substantiate this position.

Furthermore, when reading the past Decision, it appears as if much of the Landlord's arguments in that previous Decision are the same as those that he is advancing now for this new Notice. I do not find that the Landlord has submitted any compelling or persuasive documentary evidence to demonstrate what has happened between the last hearing and service of this new Notice, mere months later. It appears as if the service of the new Notice was simply just another attempt to end the tenancy on the same basis that he was previously unsuccessful on.

Moreover, I find it important to note that that previous Decision turned on the "degradation of the landlord-tenant relationship". Given that F.P. acknowledged that the relationship between the Landlord and the Tenants was full of tension, and that the Landlord was "hostile" towards the Tenants, I can reasonably conclude that this Notice was again likely served in response to this fraught relationship.

Finally, I find it important to note that the other tenancy agreement that was submitted as documentary evidence by the Landlord contains a vacate clause, whereby he is required to move into that other unit for November 1, 2023. Given that this was written into that other tenancy agreement, it causes me to question the legitimacy of his intention to move into the rental unit if he also committed to move into this other rental property for November 1, 2023. While this vacate clause may have been a mistake on the Landlord's part, it does not change the fact that he is required, by virtue of that vacate clause, to move into that other unit.

Based on my assessment of the evidence and testimony before me, as the burden is on the Landlord to prove why the Notice was served, I am not satisfied that this Notice was served in good faith. There is simply too much conflicting testimony, and not enough documentary evidence from the Landlord to be persuaded that it was truly the Landlord's good faith intention to move into the rental unit.

As I am not satisfied, on a balance of probabilities, that the Landlord served this Notice in good faith, I find that the Notice of December 31, 2022, is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for

Landlord's Use of Property of December 31, 2022, to be cancelled and of no force or effect.

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 5, 2023

Residential Tenancy Branch