



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with a tenant's application for cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice")

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

I confirmed the tenants sent their proceeding package and evidence to the landlord via email. The property manager took no issue with receiving the hearing materials via email.

The landlord submitted into evidence an email exchange between the parties in January 2023. The tenant was familiar with this exchange and did not object to its admittance as evidence.

In light of the above, I admitted the evidence of both parties and considered it in making this decision.

Issue(s) to be Decided

Should the Two Month notice be upheld or cancelled?

Background and Evidence

The tenancy started on October 1, 2021. The tenancy was set for a one year fixed term and continued on a month to month basis thereafter. Pursuant to their tenancy agreement, the tenants are required to pay rent of \$2500.00 on the first day of every month.

The subject Two Month Notice was signed by the property owner on December 23, 2022 and sent to the tenants via email on December 28, 2022. The Two Month Notice indicates the reason for ending the tenancy is because the landlord or landlord's spouse intends to occupy the rental unit. The tenants filed to dispute the Two Month Notice within the time limit for doing so.

Landlord's reasons for ending the tenancy

The landlord's property manager acknowledged that on December 21, 2022 the landlord sought the tenant's agreement to increase the rent and the tenants were not agreeable to increasing the rent by the amount requested by the landlord. However, the landlord's property manager submitted that is purely coincidental to the landlord reconsidering her own living arrangements and deciding to issue the Two Month Notice on December 23, 2022.

The landlord's property manger submitted that the landlord is 70 years old and her current living accommodation, a townhouse, has stairs which the landlord wants to avoid given her health. The rental unit is a condominium and there are no stairs one has to climb. The landlord has even started packing in preparation for moving. The landlord is willing to permit the tenants to inspect the rental unit after their tenancy ends to confirm the landlord is living in the rental unit.

In an email of January 25, 2023, the landlord described the following as the reason for seeking to end the tenancy:

I understand that you have filed a dispute regarding the notice to end tenancy that I served you. I would like to assure you that my decision to move into the condo is a genuine one and not a way to raise the rent or evict you for another tenant.

As a 70+ year old lady, I have been searching for a place that is more suitable for my needs, particularly one without stairs. My current residence has stairs, and it has been causing strain on my knees. I have been considering moving into the condo for some time now and I believe it will be better for my health.

I understand that the timing of the notice to end tenancy and my decision to move in may seem coincidental. To address your concerns, I am willing to have you check the condo periodically within the first 12 months after I move in to ensure that I am indeed living there. I have also attached some photos of me beginning to pack as proof of my intentions. Furthermore, you'll find photos of the stairs in my current home, it is an important consideration for my physical health as to why I am deciding to do this now.

In the email, the landlord attached images of the stairs at her current living accommodation and boxes partially packed with household belongings.

The tenants responded to the landlord's email indicating they would prefer to discuss it further at the hearing.

Tenant's position

The tenants are of the position the Two Month Notice was issued in retaliation for the tenants not agreeing to the large rent increase sought by the landlord.

The tenant pointed to the very short time period that lapsed between the time the landlord sought to increase the rent significantly and the issuance of the Two Month notice.

The tenant submitted that along with the request for rent increase, the landlord provided detailed printouts showing the posted rental rates for other rental units in the area.

Also, the landlord did not present evidence to corroborate her health condition. Rather, the landlord indicates she has been considering moving to the rental unit for some time which is inconsistent with seeking the rent increase.

The tenants provided copies of the communication the tenant's received shortly before receiving the Two Month Notice showing the landlord's attempts to increase the rent from \$2500.00 to \$3000.00 per month along with market research from the property manager.

In an email dated December 21, 2022, an agent for the property management company wrote to the tenants, in part:

The owner is asking us to reach out to open up a discussion with you about the rent increase. It's not their primary intention to earn more from renting but an amount to cover the increased strata fees, taxes and homeowners insurance premium. Understanding the maximum percentage allowed from the government to increase is only 2% for 2023 which is \$50/month, the rent of \$2,550 is still far below the average market point and yet insufficient to cover the said expenses for maintaining the property. To be specific, the average rent within a 0.33-mile radius for a 2-bedroom property is \$3,400 in the recent 3 months. We are attaching a report generated by Rentometer on Dec 19 for your reference.

The landlord understands it's not your liability at all for the expenses, and that a mutual agreement has to be achieved between the landlord and the tenant if the rent is to be increased beyond 2%. At this point the landlord is not asking for a rent at par, they are humbly asking for a rent at \$3,000 starting April 1st and hope you'd consider their request.

Again the landlord is open for discussion and it would be great if you can share some thoughts with us. Thank you.

On December 22, 2023, the tenant responded, in part, with the following message:

Unfortunately, we are not able to match the rent increase of \$3,000 (20%).

While we understand that property taxes and the cost of upkeep are going up, we feel that the increase of 20 percent is too steep.

Also, I believe that the state government set the 2% increase based on the right research and statics.

I hope the owner understands that we agree on the 2% increase for this rent in 2023.

On December 23, 2023 the agent for the property management company wrote:

We will inform the landlord and let you know if there is anything we'll need from you. Take care and happy holidays!

Also, on December 23, 2022 the landlord signed the Two Month Notice.

Analysis

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 before me, 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]

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]

In this case, the tenants called into question the landlord's good faith intention, pointing to the landlord's undisputed attempt to significantly increase the rent, which was

rejected by the tenants, just days before the Two Month notice was issued. Given the very short time period, I accept the tenant's position that the landlord appears to have issued the Two Month Notice in retaliation for rejecting the landlord's request to increase the rent by \$500.00 per month is obviously reasonable.

In an effort to demonstrate the landlord has a good faith intention to end the tenancy the landlord pointed to her age, her knees and her health as the reason she seeks to end the tenancy. Accordingly, I further analyze the evidence before me that pertains to the landlord's health with a view to determining whether the landlord's evidence is sufficient to overcome what appears to be a retaliatory act.

Upon consideration of everything before me, I find the landlord did not provide sufficient evidence the landlord has only a good faith intention to end this tenancy. I make this finding based upon the following considerations:

- The landlord did not appear at the hearing to be examined or cross examined.
- The landlord did not provide medical documentation to corroborate she has problems with her knees and that the rental unit would be better for her health.
- The landlord does not explain or provide a reason why she first pursued the tenants for a significant rent increase if her health condition was such that creates a need to occupy the rental unit.
- The landlord does not indicate whether she would have proceeded to issue the Two Month Notice if the tenants had agreed to her request for a significant rent increase.

In light of the above, I grant the tenant's request and I cancel the Two Month Notice with the effect the tenancy continues at this time.

Since the tenants were successful in this application, I award the tenants recovery of the filing fee they paid for this application. The tenants are authorized to deduct \$100.00 from a subsequent month's rent to recover this award and in making this deduction the landlord must consider the rent to be paid in full.

Conclusion

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

The tenants are authorized to deduct \$100.00 from a subsequent month's rent to recover the filing fee and in making this deduction the landlord must consider the rent to be paid in full.

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 10, 2023

Residential Tenancy Branch