



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on May 26, 2023 by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property, disputing a rent increase, and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call. One of the tenants testified that the landlord was personally served with the Notice of Dispute Resolution Proceeding and all evidence at the landlord's residence on February 10, 2023. I accept that testimony and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Was the Two Month Notice to end Tenancy for Landlord's Use of Property dated January 31, 2023 given in accordance with the *Residential Tenancy Act*?
- Have the tenants established that rent has been increased contrary to the law?

Background and Evidence

The tenant testified that this fixed-term tenancy began on July 1, 2021 and reverted to a month-to-month tenancy after November 30, 2021, and the tenants still reside in the rental unit. Rent in the amount of \$1,197.00 is payable on the 1st day of each month

and there are no rental arrears. At the outset of the tenancy the landlord at that time collected a security deposit from the tenants in the amount of \$598.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a lower suite and the landlord lives in the upper level. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the rental home sold and the new landlord, named in this dispute presented the tenants with a new tenancy agreement, and a copy has been provided for this hearing. It states that the tenancy starts on February 1, 2023 on a month-to-month basis for rent in the amount of \$1,450.00 per month and a security deposit of \$725.00 by February 1, 2023. The tenants did not sign it because the amount of rent is more than allowed by the law. The landlord said that he would increase rent by \$50.00 for this year and \$50.00 for last year because the landlord forgot to increase it.

The tenants were served personally with a Two Month Notice to End Tenancy For Landlord's Use of Property on January 31, 2023. A copy of the first 2 pages only of the Notice has been provided for this hearing, and the tenant testified that the landlord only served 2 pages of the 4-page document. It is dated January 31, 2023 and contains an effective date of vacancy of March 31 2023. The reasons for issuing it state:

- 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, specifying the father or mother of the landlord or landlord's spouse;
- The landlord is a family corporation and 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;
- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants question the landlord's good faith intent.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, the landlord did not attend the hearing and has not provided any evidentiary material. I also accept the undisputed testimony of the tenant that only 2 of the 4-page document were served. Any notice to end a tenancy given by a landlord must be in the approved form. In the circumstances, and considering the evidence, I am not satisfied that the landlord has given the Notice in the approved form and has not established good faith intent. Therefore, I cancel it and the tenancy continues until it has ended in accordance with the law.

The tenancy agreement signed by the tenants for the tenancy starting on July 1, 2021 reverted to a month-to-month tenancy. The tenants refused to sign the new tenancy agreement because of the increased amount of rent. The tenants are not required to sign a new tenancy agreement, and rent remains at \$1,197.00 per month until it is increased in accordance with the law.

Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order on the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated January 31, 2023 is hereby cancelled and the tenancy continues on a month-to-month basis until it has ended in accordance with the law.

I further order that the tenants are not required to sign a new tenancy agreement with the new landlord, and that rent may only be increased in accordance with the *Residential Tenancy Act* and the regulations.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 26, 2023

Residential Tenancy Branch