



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which they applied to set aside a Two Month Notice to End Tenancy for Landlord's Use.

The Advocate for the Tenant stated that on February 17, 2023 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

Neither party submitted evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2018 and that rent is due by the first day of each month.

The Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use of Property which is the subject of this dispute was sent to the Tenant, via registered mail, on February 15, 2023. The Advocate for the Tenant stated that the Tenant received the Two Month Notice to End Tenancy for Landlord's Use of Property on February 16, 2023.

Neither party submitted a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, however the parties agree that:

- The notice to end tenancy was served on the Two Month Notice to End Tenancy for Landlord's Use of Property which was generated by the Residential Tenancy Branch;
- The Two Month Notice to End Tenancy for Landlord's Use of Property was signed by the Landlord and is dated February 15, 2023;
- The Two Month Notice to End Tenancy for Landlord's Use of Property names the Landlord and the Tenant;
- The Two Month Notice to End Tenancy for Landlord's Use of Property declares that the rental unit must be vacated by April 30, 2023; and
- The Two Month Notice to End Tenancy for Landlord's Use of Property declares that the unit will be occupied by the landlord and/or the landlord's spouse.

The Landlord stated that:

- The Two Month Notice to End Tenancy for Landlord's Use of Property was served because the Landlord intends to periodically live in the unit;
- He lives in a neighboring community and visits this community regularly;
- He previously drove home to his neighboring community but he is older now and does not wish to drive to the neighboring community every time he visits this community;
- The rental unit is a duplex;
- The other unit in the duplex is the same size and is rented to a person who has lived in that unit longer than the Tenant has lived in her unit;
- On February 03, 2023 there was a dispute resolution proceeding, the file number for which appears on page one of this decision;

- Following the proceeding on February 03, 2023, a Residential Tenancy Branch Arbitrator granted the Tenant's application to cancel a One Month Notice to End Tenancy for Cause;
- I can view the decision from the February 03, 2023 proceeding;
- Prior to the hearing on February 03, 2023, he had already decided he did not wish to continue renting the unit;
- At the hearing on February 03, 2023, he offered the Tenant the equivalent of three month's rent because he did not wish to continue renting the unit;
- He is aging, his partner has been ill and he is trying to simplify his life, in part, by staying in the unit;
- He wants to spend more time in this community, which was his hometown; and
- He did not serve the Two Month Notice to End Tenancy for Landlord's Use of Property because he was not able to end the tenancy on the basis of the One Month Notice to End Tenancy for Cause.

The Advocate for the Tenant stated that:

- The Landlord lives in a neighboring community and he does not believe the Landlord will stay in the unit when he visits in this community;
- The Landlord has never stayed in the community overnight after previous visits to this community;
- On February 03, 2023 there was a dispute resolution proceeding, the file number for which appears on page one of this decision;
- Following the proceeding on February 03, 2023, a Residential Tenancy Branch Arbitrator granted the Tenant's application to cancel a One Month Notice to End Tenancy for Cause;
- I can view the decision from the February 03, 2023 proceeding; and
- He believes the Two Month Notice to End Tenancy for Landlord's Use of Property was served because the Landlord was not able to end the tenancy on the basis of the One Month Notice to End Tenancy for Cause.

Analysis

Section 49(3) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed testimony, I find that on February 05, 2023 a Two Month Notice to End Tenancy for Landlord's Use of Property was mailed to the Tenant which declares that the Landlord intends to end the tenancy pursuant to section 49(3) of the Act. On the basis of the undisputed testimony, I find that the Two Month Notice to End Tenancy for Landlord's Use of Property declares that the unit must be vacated by April 30, 2023 and that it complies with section 52 of the Act.

On the basis of the testimony of the Landlord and in the absence of any reliable evidence to the contrary, I accept that the Landlord intends to periodically use this rental unit when he is living in this community, which is approximately 87 km from his home in a neighbouring community.

In addition to establishing that the Landlord intends to occupy the rental unit, the Landlord also bears the burden of proving the Two Month Notice to End Tenancy for Landlord's Use of Property was served in "good faith". Residential Tenancy Branch Policy Guideline 2A reads, in part:

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.

I find that the Landlord has submitted insufficient evidence to establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in "good faith".

I have read the decision from the proceeding on February 03, 2023. In that decision the Residential Tenancy Branch Arbitrator concluded that the Landlord had served a One Month Notice to End Tenancy for Cause because the Tenant had allegedly removed a smoke alarm on more than one occasion. In that decision the Arbitrator concluded that the Landlord did not have grounds to end the tenancy and he set aside the One Month Notice to End Tenancy for Cause.

As the Two Month Notice to End Tenancy for Landlord's Use of Property was served to the Tenant just two days after the One Month Notice to End Tenancy for Cause was set aside, I find it reasonable to conclude that the Two Month Notice to End Tenancy for Landlord's Use of Property was served because the Landlord was unable to end the tenancy on the basis of the One Month Notice to End Tenancy for Cause. I find this strongly suggests that the Landlord the Two Month Notice to End Tenancy for Landlord's Use of Property was served in bad faith.

Although the Landlord testified that he had decided that he did not wish to continue renting the unit even before the decision of February 03, 2023 was rendered, I find this does not establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in good faith. Rather, this could be interpreted to mean that the Landlord intended to end the tenancy by any means.

In the event the Landlord wished to end this tenancy because he wished to periodically occupy the unit, one would expect that he would have served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property instead of serving her with a One Month Notice to End Tenancy for Cause.

Even if I accepted the Landlord's testimony that he offered the Tenant the equivalent of three month's rent because he did not wish to continue renting the unit, I would not conclude that this established that he served the Two Month Notice to End Tenancy for Landlord's Use of Property in good faith. Rather, this simply establishes that the Landlord is strongly motivated to end the tenancy.

I find that the Landlord's testimony that he did not serve the Two Month Notice to End Tenancy for Landlord's Use of Property because he was not able to end the tenancy on the basis of the One Month Notice to End Tenancy for Cause is not sufficient to convince me that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in good faith.

As the Landlord has failed to establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in good faith, I find that the Landlord has failed to establish that he has the right to end this tenancy pursuant to section 49(3) of the *Act*. I therefore grant the Tenant's application to cancel this Two Month Notice to End Tenancy for Landlord's Use of Property.

I find that the Application for Dispute Resolution has merit and that the Tenant has the right to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I authorize the Tenant to withhold \$100.00 from one monthly rent payment in compensation for the fee paid to file the Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 30, 2023

Residential Tenancy Branch