



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes CNL-4M OLC FFT

Introduction

The Tenants seek an order cancelling a Four Months' Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the "Notice") under sections 49(6)(e) and 49(8)(b) of the *Residential Tenancy Act* (the "Act").

The Tenants seek an order requiring the Landlord's compliance with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act.

The Tenants seek repayment of their application fee by the Landlord, pursuant to section 72 of the Act.

Preliminary Issue: Unrelated Issue

Under Rule 6.2 of the Rules of Procedure the arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. In such cases, the arbitrator may dismiss such matters with or without leave to reapply.

In this application, the claim for an order for Landlord compliance is, in my opinion, unrelated to the issue of whether the Notice is valid or ought to be canceled. As such, I shall not consider the claim for an order for Landlord compliance and this claim is dismissed with leave to reapply.

Issues

1. Are the Tenants entitled to an order canceling the Notice?
2. Are the Tenants entitled to recover the cost of the application fee?

Evidence and Analysis

In reaching this decision, I have only considered relevant and necessary oral and documentary evidence that helped resolve the issues of the dispute. As such, while there is voluminous quantities of documentary evidence submitted by the parties, most of this will not be referenced below.

The Tenancy

The tenancy began in 2015. The rental unit is a three-bedroom property part of a larger seven-rental unit multiplex building. The Tenants are a husband, wife, son, and daughter family. Monthly rent is \$1,009.93. There is a written tenancy agreement in evidence.

The Landlord's Evidence and Submissions

On January 28, 2023, the Landlord served the Notice by posting it on the door of the rental unit. A copy of the Notice was submitted into evidence, and the Notice indicated that the Landlord was ending the tenancy so that the rental unit could be converted for use by a caretaker, manager, or superintendent of the residential property.

The Landlord and their property manager testified under oath that because the Landlord is in over his head in managing rental property, he needs a caretaker or property manager on site.

They have not yet posted for the position and are waiting for the outcome of this application before doing so. It is noteworthy that during the Landlord's testimony he said that he is "probably going to need some sort of property manager."

The Landlord's property manager testified that it is clear neither party has the capability or scope of experience to manage the situation. An on-site property manager or caretaker needs to be brought in to "clean it up and run it professionally." He further argued that "I don't think there's any ill-will" and that the Notice was given in good faith.

The Tenants' Evidence and Submissions

The Tenant testified and argued that the Notice was given in bad faith and that the Landlord does not intend in good faith to have a caretaker or property manager occupy the rental unit. Rather, he argued that the issuing of the Notice is motivated by (1) economic reasons and (2) personal reasons. The Tenant argued that a rental unit of this type in which he resides could easily command significantly more rent. In other words, the Landlord intends to rent it out for much higher rent.

Second, the Landlord is, he argued, trying to evict the Tenants and their family because of the Landlord's in-laws' desire to have the Tenants removed. The Tenant also questioned why there would be a need for an on-site manager with so few rental units.

The Tenants' written submissions, and which were also mentioned during the Tenant's testimony, that in June 2021 the Landlord offered the Tenants \$6,000 to vacate the rental unit. The Tenants declined this offer.

The written submission also includes the following, which was testified about by the Tenant: "During the period when I complained about [the father-in-law]'s aggression, in an email dated July 23, 2022, the [Landlord] asked me if I'm in agreement with hiring a building manager to provide a safe living space for all tenants."

My response to him was that I would take it as a gesture to resolve [the father-in-law]'s aggression and that in the end it was his prerogative. Now we are being evicted to bring in a manager. This does not make sense to us. It feels like retaliation for complaining against [the father-in-law], his father-in-law.”

Analysis

The Notice was issued under section 49(6)(e) of the Act by which a tenancy may be ended when a landlord intends in good faith to convert the rental unit for use by a caretaker, property manager, or superintendent of the residential property.

In this case, the Tenants dispute that it is the Landlord's good faith intention to convert the rental unit for this use.

“Good faith” is a legal term that means a party is acting honestly and without intention to defraud or avoid their obligations under the law or agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827), the Supreme Court of British Columbia ruled that a claim of good faith requires honesty of intention and absence of ulterior motives. This means that a landlord must honestly intend to use the rental unit for the stated purpose on the notice to end tenancy.

If a tenant raises the issue of an ulterior motive or purpose for ending the tenancy, the burden is on the landlord to prove that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant accuses the landlord of not acting in good faith, the tenant may provide evidence to support their claim.

In this case, while the Landlord may well intend to use the rental unit for the purpose of accommodating a caretaker or property manager, I do not find that there is an absence of ulterior motives.

There is clear evidence that the relationship between the Landlord's in-laws and the Tenants is acrimonious at best, downright hostile at worst. And the timing of the Landlord's query to the Tenants about hiring a property manager while the soured relationship between the father-in-law and the Tenants reached a feverish pitch is suspect. It raises a serious doubt in my mind that the Notice was issued merely for the sole purpose of having a caretaker occupy the rental unit absence something else.

There are, however, additional indicia giving me pause in concluding there exists a determined and well-meaning intention to convert the rental unit. One is the fact that the Landlord already has a property manager, one Mr. D.P., who attended the hearing and gave testimony. That a property manager or caretaker now need to reside on-site is questionable. No property manager was previously needed. It was only when the in-laws-Tenants interactions worsened did it become a need.

Second, the Landlord's testimony about them "probably" going to need "some sort" of property manager raises doubt in my mind as to the determined intention to have a caretaker occupy the rental unit. That not a single job posting for the anticipated caretaker position was made gives me further reason to pause. Certainly, I can appreciate the Landlord's comments about waiting to see what happens with this application, but even in the absence of any job posting I am left unpersuaded as to the seriousness—and thus, good faith—of the Landlord in having a caretaker.

Again, to reiterate, this is not to say that the Landlord does not want to have a caretaker on site. If anything, they might purportedly help manage the various personalities (though, quite frankly, that is hardly the role of a caretaker).

However, for the reasons set out above I find that the issuing of the Notice is not absent ulterior motives, however well-intentioned those ulterior motives might be.

In summary and taking into careful consideration all the relevant oral and documentary evidence before me, it is my finding that the Landlord has not proven the section 49(6)(e) ground on which the Notice was issued.

Accordingly, I order that the Four Months' Notice to End Tenancy for Demolition or Conversion of a Rental Unit, served on January 28, 2023, be cancelled immediately. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

The Tenants are entitled to recover the cost of the application fee. Pursuant to section 72(2)(a) of the Act the Tenants may deduct \$100.00 from a future rent payment to compensate them for the cost of the fee.

Conclusion

The application is granted, and the Notice is hereby cancelled.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 14, 2023

Residential Tenancy Branch