



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OPL, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the fee for filing an Application for Dispute Resolution.

The Tenant with the initials "KK", hereinafter referred to as KK, stated that on March 15, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in March of 2023 was personally served. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord with the initials "JF", hereinafter referred to as JF, stated that on March 23, 2023 the Landlord's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in March of 2023 was sent to each Tenant, via registered mail. KK Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 29, 2023 the Landlord submitted additional evidence to the Residential Tenancy Branch. JF stated that this evidence was sent to the Tenants, via registered

mail, on May 29, 2023. KK acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

On June 04, 2023 the Landlord submitted additional evidence to the Residential Tenancy Branch. JF stated that this evidence was not served to . As such, it was not accepted as evidence for these proceedings.

On June 08, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch. KK stated that this evidence was posted on the landlord's door on June 08, 2023. The landlord stated this evidence was not received. As this evidence is merely a written submission, I find that KK can present those submissions orally and I do not need to view that evidence.

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 of Property be set aside or should the Landlord be granted an Order of Possession on the basis of that Notice?

Background and Evidence

The parties agree that the tenants moved into the rental unit in 2014.

JF stated that on March 02, 2023 the Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the door of the rental unit. KK stated that this Two Month Notice to End Tenancy for Landlord's Use of Property was located on March 01, 2023.

The parties agree that the Two Month Notice to End Tenancy for Landlord's Use of Property declares the rental unit must be vacated by May 01, 2023 because it will be occupied by the child of the Landlord or the Landlord's spouse.

The Landlord's son, hereinafter referred to as PK, stated that:

- He vacated a suite he was previously renting;
- He, his girlfriend, and her child temporarily moved into the Landlord's home;
- The Landlord is his father;
- He has been unable to find alternate accommodations;
- He does not wish to continue to live with his father; and
- The rental unit provides enough space for his girlfriend, her daughter, his tools, and his vehicles.

The parties agree that in December of 2019 the tenants signed a new tenancy agreement in which the tenant agreed to increase the rent for an amount that was greater than the allowable rent increase for 2020. KK stated that the tenants only agree to the rent increase because the Landlord told them his son would move into the rental unit if they did not agree to the rent increase. The Landlord stated that he never told them his son would move into the unit if they did not agree to the rent increase.

KK stated that in December of 2022, the Landlord gave them three options, which included giving up a portion of the rental unit so the Landlord could build second unit; moving into another unit so the Landlord could renovate this unit; or moving out. The Landlord denies making these suggestions.

KK stated that on March 01, 2023 the Landlord offered similar options, although this time the Landlord wished to take over a larger portion of their rental unit. The Landlord denies making these suggestions.

The Tenants submitted a text message, in which they asked the Landlord to explain the three options he had offered. KK stated that this message was sent to the landlord on March 01, 2023, prior to the Two Month Notice to End Tenancy for Landlord's Use of Property being posted on her door. KK stated that the Landlord did not respond to the message. The Landlord stated that he did not respond to the message because he did not understand the question.

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 evidence, I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which serves as notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*.

On the basis of PK's testimony and in the absence of evidence to the contrary, I find that the Landlord is his father and that PK intends to move into the rental unit.

The Tenant raised the issue of good faith and that must be considered.

In regard to the issue of good faith, Residential Tenancy Branch Policy Guideline 2A reads:

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 this Two Month Notice to End Tenancy for Landlord's Use of Property was served in good faith.

In considering the issue of good faith, I considered the Tenants' submission that the Tenants only agreed to a rent increase that exceeds the allowable amount in December of 2019 because the Landlord told them his son would move into the rental unit if they did not agree to the rent increase. Although the Landlord denies this allegation, I find the Tenants' submission has some credibility, given that the rent was increased and the Landlord has not submitted any alternate explanation of why the tenants would agree to an increase of this amount.

In considering the issue of good faith, I considered the Tenants' submission that on more than one occasion the Landlord offered the Tenants three options, which included giving up part of the unit so the Landlord could create another rental suite, moving to another suite owned by the Landlord, or moving out.

I favour KK's testimony that these offers were made over the Landlord's denial that they were not made. I find that KK's testimony regarding the offers were detailed, consistent, and credible. I find that her testimony is corroborated by the text message that was sent on March 01, 2023, in which she asked the Landlord to explain the three options. I can think of no reason why KK would ask that question if the options had not been offered.

I find the Landlord's explanation that he did not respond to the text message sent on March 01, 2023 to be less credible. Typically, when someone does not understand a question, they ask for clarification rather than simply ignoring the question.

I find the Tenants' submission that on March 01, 2023 the Landlord and KK discussed the three options was corroborated, to some degree, by the witness statement from the individual with the initials "AK". In that statement the witness declared that he overheard KK refer to the Landlord taking over the basement or "kicking" the Tenants out. While I accept that this statement has the frailties of hearsay evidence, it lends some weight to the Tenant's submission.

I find the options offered to the Tenants strongly suggests that the Landlord has an ulterior motive for ending the tenancy, which could be that they intend to renovate the unit and create two units.

As I am not satisfied the Two Month Notice to End Tenancy for Landlord's Use of Property was served in good faith, I grant the application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property. The Landlord's application for an Order of Possession is therefore dismissed.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

The Landlord's application to recover the filing fee is dismissed, as the Landlord has failed to establish the merit of their Application for Dispute Resolution.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed in its entirety.

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

I find that the Tenant has established a monetary claim, in the amount of \$100.00, in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for \$100.00. KK will be the only person named on the monetary Order, as she is the only person named on the Tenant's Application for Dispute Resolution.

In the event that the Landlord does not voluntarily comply with this monetary Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. In the event the Tenant does not wish to enforce the monetary Order, the Tenant has the right, pursuant to section 72 of the *Act*, to withhold \$100.00 from one monthly rent payment in full satisfaction of this monetary claim.

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: June 27, 2023

Residential Tenancy Branch