



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The agent was represented by counsel. The agent is the landlord's son.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenant served the landlord with the tenant's application for dispute resolution and first evidence package via registered mail within the required time period. I find that the tenant's application for dispute resolution and initial evidence were served in accordance with sections 88 and 89 of the *Act* and rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the "Rules").

Counsel submitted that the tenant was served with the landlord's evidence via registered mail on May 19, 2023. The tenant testified that she received the landlord's evidence but could not recall on what date. I find that the tenant was deemed served with the landlord's evidence on May 24, 2023, five days after its registered mailing, pursuant to section 88 and 90 of the *Act*, and in accordance with Rule 3.15 of the Rules.

The tenant testified that after she received the landlord's evidence she served the landlord with a second evidence package via registered mail. The tenant testified that she did not recall the date the second evidence package was mailed. Counsel submitted that the second evidence package was received on May 29, 2023. Counsel submitted that the second evidence package was not served in the required time period and should be excluded from consideration.

Rule 3.14 of the Rules states that evidence not submitted with the applicant's application for dispute resolution must be received by the respondent at least 14 clear days before the hearing. The landlord received the tenant's second evidence package 6 clear days before the hearing. I find that the tenant's second evidence package is excluded from consideration because it was not served in accordance with Rule 3.14. I find that it would be procedurally unfair to accept the tenant's late evidence for consideration because the landlord did not have time to respond to that evidence under Rule 3.15.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began in August 2016, and
- Monthly rent in the amount of \$1,500.00 is payable on the first day of each month

Counsel submitted that the tenant was served with the Notice via registered mail on March 7, 2023. The tenant testified that she received the Notice but does not recall on what date.

The Notice states the following reason for ending this tenancy:

- 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).
 - The child of the landlord or landlord's spouse.

Council submitted that the agent, his wife and young child have decided to move into the subject rental property. Council submitted that between November and December of 2022, before serving the Notice, the landlord tried to negotiate with the tenant in good faith to mutually agree to end the tenancy. The landlord entered into evidence the following email from conversation between the landlord and the tenant occurring between November 28, 2022 and December 19, 2022:

- Landlord:
 - This is [the landlord]. I hope this email finds you well. We are planning to take over the [subject rental property] for our own use. Therefore, I would like to discuss with you about your moving out from the property. I am proposing a move-out date on March 31st , 2023. If you agree, I offer you not to pay the rent for February and March in 2023 . If you agree to these terms, please sign the mutual agreement attached to end the tenancy. Please let me know your thoughts. Best regards.
- Tenant:
 - Nice to hear from you, with exception to the circumstances. What do you mean to take over the property? I understood from [the agent] that there was no imminent need to worry about moving out as you're settled and so is he with a new baby?? Our real estate market has seen a very big decline, it would be very challenge ng for me with the current rates and vacancies to find a new home at this time. Are you concerned about the home as I've really tried to treat this with the utmost care to maintain? I'd really like to stay. I'm not sure if you're aware but [J] and I are no longer together so it's just me undertaking to navigate this. I need to have a home my kids can come and go from as [J] does not have accommodations for them for more than a couple nights here and there. If there's an issue we can address, please don't hesitate to call me to discuss. I'm very easy to reach at [redacted for privacy]

- Landlord:
 - The reason I want to take over the property is that my son, his wife and the newborn baby are going to move [to City near subject rental property] next year, they need a place to stay. Additionally my wife just retired, she and the parents of my daughter-in-law are planning to visit Canada, they need a sizable place to accommodate, so I need to end the tenancy with you to have the house for our own use. I think you can find another place to stay, given this four months notice and the favorable two months rent free condition.
- Landlord:
 - I agree to give two more months for you to find a place and move, that is, you move out of the property by the end of May, 2023, and you still have two months free of rent. That is the latest date I can accept. If you agree please sign the mutual agreement to end a tenancy attached to the early email.
- Tenant:
 - I'll work towards a move out in this timeline, and appreciate the concession.

Both parties agree that the tenant refused to sign the Mutual Agreement to End Tenancy sent to the tenant via e-mail. Counsel submitted that the Notice was served on the tenant following the tenant's refusal to sign the Mutual Agreement to End Tenancy.

Counsel submitted that the agent is currently a PhD Candidate at a University in another province and will reside in that province until he can gain possession of the subject rental property. Counsel submitted that the agent does not have any in class commitments and can complete his program remotely from the subject rental city.

The tenant testified that the landlord has not provided proof that the agent can complete his PhD program remotely and that she called the University and they said they are an in-person institution.

Counsel submitted that while the university in question may be an in-person institution, this doesn't prove anything as the agent is a PhD candidate and his program focuses on independent study and research with no physical engagements.

Counsel submitted that the agent's wife took a job in a city neighbouring the subject rental city and that while the contract contemplates remote work, the agent's wife

intends on working in office to further career goals as soon as they take possession of the subject rental property. Counsel submitted that the work contract contemplates remote work, the contract states that “The Employee could be expected to perform work duties at other locations or sites deemed reasonable by the Company”. The landlord entered into evidence an employment contract between the agent’s wife and a company located in a city close to the subject rental city. The agent’s wife has signed the employment contract but the employer has not.

The tenant testified that the employment contract is not executed by the employer and the amount of pay is left blank. The tenant questioned why the landlord did not enter into evidence pay stubs and additional proof of employment. The tenant alleged that the employer and the agent are friends and worked together to collaborate on the employment contract to bully her out of the subject rental property.

Counsel submitted that:

- The agent’s wife is currently employed with the employer set out in the employment contract
- Redactions to the employment contract were made to protect privacy
- There is no conspiracy between the agent and the agent’s wife’s employer

Counsel submitted that in preparation for their move to the subject rental city, the agent and the agent’s wife have:

- Registered for a family doctor in British Columbia
- Hired a moving company
- Registered for a waitlist for childcare in the subject rental city

The landlord entered into evidence a Healthlink BC email confirming registration in the Health Connect Registry and an email from a daycare confirming that the agent’s child is on a waitlist for childcare in the subject rental city. The sending email addresses on the above emails have been redacted.

The tenant testified that the applications to Health Connect and the daycare are quick online applications which prove nothing. The tenant hypothesized that the emails were redacted because a third party made the applications for the agent.

Counsel submitted that the agent will occupy the subject rental property for a residential purpose for the foreseeable future or, in any event, a minimum of 6 consecutive months in accordance with the *Act*. Counsel submitted that the agent has shown all the indicia

of a family about to move to a new province.

Counsel submitted that the agent and his family meet all the requirements for good faith per Guideline 2A. Specifically:

- a. They are acting honestly. They will occupy the Property for at least 6 months and are preparing for the move, including hiring a moving company to ship their belongings;
- b. They intend to do what they say they will do because they know the law requires them to occupy the Property for at least 6 months. They will do so;
- c. They have no ulterior purpose for ending the tenancy. Their only purpose is to occupy the Property as their family home; and
- d. They are not trying to avoid any obligations under the *Act* or Tenancy Agreement.

The tenant testified that she originally agreed to look for a new place as set out in the December 2022 email reproduced earlier in this Decision, but then the landlord wouldn't provide her with answers to her questions and she felt like there wasn't a foundation of honesty. The tenant did not specify what questions the landlord did not answer satisfactorily. The tenant testified that she perceived the landlord to be scheming and doesn't believe that the landlord's son is going to use the subject rental property for his own use.

Analysis

Based on the Notice entered into evidence and the undisputed submissions of counsel, I find that the tenant was deemed served with the Notice on March 12, 2023, five days after its registered mailing in accordance with sections 88 and 90 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline 2A explains the 'good faith' requirement as 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.

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for the agent (the landlord's son). In making this finding, I have taken into consideration all of the testimony of each party and all of the accepted documentary evidence presented in this hearing.

I find that the email communications between the landlord and the tenant from November 2022 to the service of the Notice supports counsel's submissions that the agent intends to move himself and his family into the subject rental property. I find that the actions of the agent in putting his child on a daycare waitlist and enrolling in a registry for a family doctor are actions which support the agent's intent to relocate his family to the subject rental property. I find that whether the agent, the landlord or a friend helped with the registration process is irrelevant, what is relevant is that the agent took steps to facilitate his move to the subject rental property. I find that the registrations support the counsel's good faith submissions.

I find that it is common knowledge that many learning opportunities can be completed online and do not require in person attendance. I accept counsel's submissions that the remainder of the agent's PhD program can be completed remotely and does not require regular in person attendance.

I find that the tenant has not provided any reliable evidence to support the tenant's allegation of collusion between the agent and the agent's wife's employer. I find that it is not uncommon for friendships and connections to lead to employment opportunities, and I take no ill finding from the pre-existing relationship between the agent and the agent's wife's employer. The agent's wife's employer is located near the subject rental city. I accept counsel's submissions that the agent's wife intends to work in office which can be accomplished if the agent and the agent's wife move into the subject rental property.

I do not find the unsigned employment contract to be a red flag. The landlord does not have to provide every possible document, such as pay stubs and proof of employment letters, to prove the case beyond a reasonable doubt. The landlord's burden of proof is on a balance of probabilities. I find that the landlord has met this burden and has proved, on a balance of probabilities that the agent intends to move into the subject

rental property. Pursuant to section 49(3) of the *Act*, I uphold the Notice and dismiss the tenant's application for dispute resolution, without leave to reapply.

When a tenant's application to dispute a landlord's notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Notice submitted into evidence, I find that the Notice complies with section 52 of the *Act*. As a result, I find that the landlord is entitled to a two-day Order of Possession.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application for dispute resolution is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 06, 2023

Residential Tenancy Branch