



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

On March 21, 2023, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

Both Tenants attended the hearing, and C.W. attended the hearing as an agent for the Landlord. C.W. indicated the correct name of the Landlord, so the other party that the Tenants named as a Respondent has been removed from the Style of Cause on the first page of this Decision to reflect this correction.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package and the parties' respective documentary evidence was discussed, and there were no issues with service. As such, all parties' evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 15, 2019, that rent was established at an amount of \$2,400.00 per month, and that it was due on the fifteenth day of each month. A security deposit of \$1,200.00 was also paid. A copy of a signed tenancy agreement was submitted as documentary evidence for consideration.

C.W. advised that the Notice was served to the Tenants by email on March 12, 2023, and the Tenants clearly received this as they indicated as much on their Application, and they disputed the Notice within the legislated timeframe. The reason the Landlord served the Notice is because "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)." As well, the Landlord indicated that it would be "The landlord or landlord's spouse" that would specifically be occupying the rental unit. The effective end date of the tenancy was noted as May 14, 2023, on the Notice.

C.W. advised that this was the second such Notice that was served to the Tenants, and the first one was cancelled in a previous hearing because there was no documentary evidence submitted (the relevant file number is noted on the first page of this Decision). He referenced documentary evidence provided to demonstrate the Landlord's wife's required transfer due to work, her flight ticket from Toronto to Vancouver, as well as a statement from the Landlord.

He testified that the Landlord first advised him of his wife's requirement to move in on or around December 2022, but he was not sure of the exact date. As the Tenants have not vacated the rental unit, he stated that the Landlord's wife is currently living in her friend's basement. He advised that the Landlord does not live in Vancouver, and may possibly reside in China. He stated that he did not know if the Landlord owned any other properties in Vancouver.

With respect to the inconsistencies in the previous Decision about where the Landlord's wife worked, he stated that he made a mistake. Moreover, with respect to the reason given on the first Two Month Notice to End Tenancy for Landlord's Use of Property dated September 26, 2022, he testified that the different reason of "The child of the landlord or landlord's spouse" was because the Landlord could not check off multiple reasons. He stated that the Landlord told him to serve the Notice right after the previous Decision was received; however, he stated that he waited to serve the Notice as he consulted with a lawyer and conducted much "research".

Tenant N.S. referenced the Landlord's letter indicating a separation from his wife, and then she directed me to the previous Decision where the Landlord was cautioned from serving a similar notice for the same reason. She submitted that the Letter of Relocation was dated the same day as the previous Decision. As well, she advised that their evidence was served to the Landlord by registered mail and a person with a similar name as the Landlord signed for the package.

C.W. replied that the service address that was provided for the Landlord on the Notice was actually his own address, that "maybe" his wife or mother signed for this package, and that he had no idea who signed for it. However, he then claimed that his mother shared a similar name as the Landlord.

N.S. then advised that the Landlord's letter indicated that they knew in September 2022 that the wife would be relocated for work, so she questioned why the first notice was given for the purpose of the Landlord's son moving in. She then testified that shortly

after the first notice was served, the Landlord's son visited the property because he wanted to view it. She stated that she talked to him, that he told her he lived in Ontario, and that he did not mention what the Landlord would be doing with the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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.

I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and testimony before me, I find it important to note that C.W. testified in the previous hearing that, "the owner was living in Alberta, had a job change, and wanted to move to British Columbia. The agent said the owner's son would move into the rental unit and eventually, the owner would move in as well." While C.W. claimed that this was a mistake, I found his testimony to be contradictory and inconsistent during the hearing, and he provided few clarifying details when asked. It was readily apparent that either he was crafting answers at the moment, or he knew little of what was actually happening. Given that the Landlord's own letter indicated that his wife was informed of the relocation in September 2022, it is not clear why the first notice was served due to the son moving in.

Moreover, when C.W. was asked why there was a delay in serving the Notice for use by the Landlord's wife if she knew on February 27, 2023, that she would be required to relocate, he stated that it was because there was "lots of research" that was done. However, if this Notice was served truly for the purpose of the Landlord's wife to move in, it is not clear to me what sort of "research" needed to be completed.

In addition, I find it curious why C.W. provided his own address for the Landlord's address for service of documents. Regardless, I note that he initially testified that he was uncertain of who signed for the Tenants' evidence package, even though it was sent to his own home address. I am skeptical that he would not know who signed for a package that was sent to his own home. However, he then later claimed that it was his mother that signed for this package and that she happened to share a similar name of the Landlord. I find that this initial uncertainty, and then a seemingly random coincidence of a similar name as the Landlord, further adds to a reasonable conclusion that C.W. was more likely than not providing false testimony.

Given all the above doubts and inconsistencies, and as the second Notice was served after being unsuccessful on a prior, similar notice to end tenancy, I find that this time conducting "research" was, more likely than not, utilized to craft a false narrative that would conceivably pass as a justification for service of the Notice. Moreover, as the Landlord was cautioned in the previous Decision not to serve same notice for same

reason, I find this time doing “research” supports a conclusion that the Landlord likely served the Notice for a different reason, in an effort to attempt to end the tenancy in bad faith.

Based on my assessment of the evidence and testimony before me, I find the reliability and credibility of C.W. to be dubious, at best. As such, I prefer the Tenants’ evidence on the whole. As I am not satisfied, on a balance of probabilities, that the Landlord served the Notice in good faith, I find that the Notice dated March 12, 2023, is cancelled and of no force and effect.

The Landlord is cautioned that continuing to serve invalid notices to end tenancy for the same purposes may be determined to be a breach of the Tenants’ right to quiet enjoyment of the rental unit. This may support a claim of monetary compensation owed to the Tenants due to a loss of use of the rental unit.

Conclusion

Based on the above, I hereby order that the Two Month Notices to End Tenancy for Landlord’s Use of Property dated March 12, 2023, to be cancelled and of no force or effect.

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 21, 2023

Residential Tenancy Branch