



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Landlord's Two-Month Notice to End Tenancy under section 49(3) of the Act, served on the Tenant on March 27, 2023.

Issue to be Decided

Is the Landlord entitled to end the tenancy under section 49(3) of the Act?

Preliminary Matters

The Tenant stated he did not "see" the Landlord's evidence submitted for the hearing. The Landlord provided the tracking for the documents sent by registered mail. This established that the Landlord's document package was delivered on May 13, but not picked up by the Tenant until May 20. The Tenant admitted that he had the package but chose not to open it, stating that it was not received within the 14-day period required by the dispute resolution notice.

As a preliminary matter, I find that the Landlord did provide his documents for this hearing to the Tenant in a manner that would permit the Tenant an opportunity to review prior to the hearing. The Tenant could not wilfully refuse to receive or review the documents and then use that as a reason to suggest that the documents were not provided to him in time for the hearing.

Background and Evidence

The Landlord and Tenant entered into a fixed term, one-year tenancy agreement on September 1, 2020 for the rental unit. The tenancy agreement provided that the Tenant was required to move out at the expiration of the term (August 31, 2021) because the rental unit was being provided only during the Covid period. A “special” rental rate of \$2,000 per month, due on the first of each month, due to Covid was also stated in the tenancy agreement. The Landlord required a \$1,000 security deposit which he has retained.

On March 24, 2023, the Landlord issued a Two-Month Notice to End Tenancy (Notice) for the Landlord’s use of the rental unit. The Notice provided the Tenant was to move-out by May 31, 2023. The Tenant applied for dispute resolution to cancel the Notice.

The Landlord testified that he, his wife and his son would move into the rental unit. The Landlord further testified that he was elderly (he stated he was 75 years old) and that he had suffered medical issues resulting in treatment. He testified that his wife also had medical issues. The Landlord explained that he and his wife had hoped to move into the rental unit earlier but their medical problems combined with the Covid-19 pandemic delayed their ability to do so until now. The Landlord testified that his family had waited a long time to move in. He stated that his physician had suggested that he downsize from their current home to a condominium. Additionally, his son (who was an adult and renting a condo in the area with a roommate) had wanted to move into the unit five years earlier, but the Landlord stated he needed to rent the unit at that time because he required the additional income.

The Tenant testified and presented communications between he and the Landlord from August 2021 to the effect that the Landlord may have been attempting to re-let the rental unit at an increased rental rate. The Tenant also submitted documents regarding bug bites he stated he incurred as a result of a lack of screens on the windows and that the Landlord had asked him on three occasions in March 2023 to move out of the unit. The Landlord denied making these requests. The Tenant further testified that he was low income as his son, confined to a wheelchair and on a ventilator, required extensive home care that he provided.

In response to the documents submitted by the Tenant, the Landlord directed attention to insurance and other documents he submitted for purposes of the hearing that detailed approximately \$19,000 in water damage to the unit below caused by the Tenant's installation of a shower head and removal of a shower door; and, the Tenant's failure to keep the rental unit and parking area tidy. With respect to the Tenant's assertion that lack of screens caused severe bug bites, the Landlord noted that there was no evidence that the Tenant was not bitten in another location and, more relevant, that the strata rules would not permit the installation of screens on the windows.

Analysis

Section 52 of the Act sets out the requirements for a valid notice to end a tenancy. It requires that the notice be signed by the party giving the notice, that it provide the address of the rental unit, state the effective date of the notice, provide the reason and when given by the landlord, be in an approved form. A copy of the Notice is in evidence. I find that the Notice was proper under the Act.

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends, in good faith, to occupy the rental unit. A "close family member" means the landlord's parent, spouse or child.

Policy Guideline 2A summarizes the "good faith" the landlord must establish in order to end the tenancy for the landlord's use of the rental. Good faith has been legally defined as requiring an honest intention with no dishonest motive. If a dishonest motive is raised, the burden is on the landlord to establish they are acting in good faith. In other words, good faith means the landlord is acting honestly, without intent to deceive or defraud the tenant; have an ulterior purpose to end the tenancy; or, seek to avoid an obligation under the Act.

The Landlord's testimony regarding his intent to move into the rental unit with his wife and son is credible. The Landlord provided testimony regarding his age and health, the health of his wife, and his son's current living arrangement which support a finding that the Landlord has a good faith intention to end the tenancy so that his family may occupy the unit. Additionally, the Landlord credibly testified that the reason his family was moving now was due in part to the delay caused by his having had to undergo surgery, and the effect of the pandemic on his and his wife's health issues. Although the Tenant presented evidence that in 2021 the Landlord may have sought to end the tenancy to

obtain a higher rental rate, the Landlord did not pursue that course and the tenancy continued for the next approximate two years.

Additionally, I do not find relevant to a determination of the case the Tenant's position concerning the Landlord's failure to place screens on the windows. Similarly, the damage to the unit below that may have resulted from the Tenant's removal of a shower door and/or placement of an inappropriately sized shower head, I find is also not relevant to this determination.

I find the Landlord is acting in good faith and is entitled to end the tenancy under section 49(3) of the Act. The Landlord is to have possession of the rental unit on July 31, 2023, in light of the medical condition of the Tenant's child. The Landlord is to provide the equivalent of one month's rent as compensation to the Tenant under section 51 of the Act, if the Landlord has not already done so.

At the end of the tenancy the tenants must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to deposits, damage and compensation, information is available on the RTB website.

Conclusion

The Tenant's application to cancel the Two-Month Notice to End Tenancy for Landlord's use of the rental unit is denied. The Tenant's request for the filing fee is also denied.

I grant an Order of Possession to the Landlords effective July 31, 2023, with valid service of the Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be 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 1, 2023

Residential Tenancy Branch