



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlords comply with the *Act*, regulation or the tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Two of the named tenants attended the hearing and each gave affirmed testimony. The landlord also attended, accompanied by the landlord's spouse and an interpreter. The landlord and the landlords' spouse each gave affirmed testimony, and called 2 witnesses who also gave affirmed testimony. The interpreter was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the interpreter's skill and ability. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, and all evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to rent increases?

Background and Evidence

The landlord testified that there is no written tenancy agreement, and the one provided as evidence for this hearing by the tenants is wrong.

The landlord purchased the rental unit with a completion date of May 25, 2020 and the tenants resided in the rental unit at that time. Rent was \$1,283.00 per month at that time. The tenants still reside in the rental unit. Rent is due on the 1st day of each month, but the landlord does not know whether or not there was a security deposit or pet damage deposit included in the Statement of Adjustments. The rental unit is one of 2 basement suites and the landlord's mother and mother-in-law reside in the upper level.

On March 22, 2023 the landlord gave the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property, however it was just a 2-page Notice, then the landlord re-served it with 4 pages. Copies of both Notices have been provided for this hearing. The 2-page Notice is dated March 22, 2023 and contains an effective date of vacancy of May 23, 2023. The 4-page Notice is dated June 7, 2023 and contains an effective date of vacancy of June 25, 2023. The reason for issuing it states: 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), specifying the father or mother of the landlord or landlord's spouse.

The landlord wants the basement suites for the landlord's mother and mother-in-law to occupy. There is no room upstairs and the landlord's son has been sleeping in their room. The landlord and the landlord's spouse and their kids will continue to live upstairs.

At the beginning of the tenancy the rent was \$1,283.00, which was raised by 2% effective September 1, 2022. Rent was increased from \$1,283.00 to \$1,400.00 near the date that the landlord took possession.

The landlord's spouse testified that the children don't have their own rooms to sleep in, and their grandmothers can move downstairs.

The tenancy agreement was not provided to the landlord until after the Notice was served. A previous hearing resulted in an order of possession being granted to the previous owner due to the sale of the property, and the Arbitrator was not informed that such a tenancy agreement was in place. The tenants were not willing to move out and the landlord at that time allowed them to stay. In 2020 the tenants said they would

move out on their own and asked for more time. The landlord let the tenants stay out of sympathy because the tenant said her son was sick, but it's been long enough.

The parties had agreed to an increase of \$117.00, then the following year the landlord requested \$200.00, but were not aware of the rules around rent increases at that time.

The landlord's first witness (GS) testified that the witness works for Vancouver Eviction Services. The witness posted a Two Month Notice to End Tenancy for Landlord's Use of Property to the door of the rental unit on June 7, 2023 with another witness. There were 4 pages.

The landlord's second witness (MB) testified that she was the previous owner of the rental unit and previous landlord.

The witness also testified that the tenancy agreement with the tenant was for a 6 month fixed term and then reverted to a month-to-month tenancy. When the witness sold the rental unit, the tenants wouldn't let the witness show the basement suite, and a hearing was held. The witness was granted an Order of Possession. There was no 10 year lease.

The witness does not recall how much the rent was or the amount of the security deposit collected, but it was half a month's rent. The witness does not recall if the security deposit was given to the current landlord.

The first tenant (SiG) testified that a landlord cannot give a notice to end the tenancy based on the lease. Now the landlord says the tenancy agreement is in question, but it's about more money, which is not permitted. A Notice to end the tenancy for landlord's use of property cannot be given until the end of the lease.

The tenants have provided a copy of a Tenancy Agreement/Lease which contains the address of the rental unit, the previous landlord's name, names of 4 tenants and is signed by all parties but is not dated. It provides for a fixed term tenancy commencing on August 31, 2016 ending on August 31, 2026 for rent per month from August 31, 2016 till August 31, 2026 of \$1,200.00 and a damage deposit paid of \$600.00.

The second tenant (SoG) testified that at the previous hearing, the Arbitrator had a problem with evidence. The tenants lost at that hearing but were not served with an order of possession.

The previous landlord didn't give any information to the new landlords, such as the tenancy agreement or security deposit.

The tenants seek to have the Notice cancelled and an order that the landlord comply with the tenancy agreement.

The tenants have also provided a copy of an undated text message from a realtor and friend of the previous landlord to substantiate the testimony that the parties had a fixed-term tenancy. It states: "We put notice on your door today March 31st 2020 evening. The (landlords) are looking to possibly lease/rent home. We don't have any potential people right now. But we would prefer a empty suite as they are wanting to lease/rent home. Thank you for always letting us see suite. We understand you have a lease till August 2026 but we really need empty suite. If you can help us please. Thanks."

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must establish that it was given in good faith with no ulterior motive.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property dated June 7, 2023, and I find that it is in the approved form and contains information required by the *Act*. The tenants dispute the landlord's ability in law to issue the Notice because of the fixed term.

The previous landlord testified that there was no 10 year fixed term, but a 6 month fixed term to revert to a month-to-month tenancy thereafter. I have reviewed the tenancy agreement and it appears to be signed by all parties, but is not dated. I have compared the signatures with Shelter Information document, which appear to be the same.

I have also considered the landlord's letters dated October 12, 2020 and July 24, 2022. The one dated October 12, 2020 advising the tenant that rent is increasing on November 1, 2020 to \$700.00 for each basement suite, or \$1,400.00 for both. The one dated July 24, 2022 indicates that rent was increasing on September 1, 2022 from \$1,400.00 to \$1,600.00 for both basement suites, or \$800.00 each. A landlord may not raise the rent with a letter, but use an approved form, and may only increase the rent once per year in the amount set out in the regulations. The amount of the increase

cannot be chosen by the landlord. However, that error in itself does not totally give rise to an ulterior motive.

The previous landlord was successful in obtaining an order of possession on 2 days notice to the tenant, and a copy has been provided for this hearing. It is dated June 1, 2020 and indicates that enforcement of certain orders during the state of emergency is prohibited. I have reviewed the Decision of that hearing to ensure that I do not make any findings of fact or law that may have already been adjudicated upon. The tenants had disputed the Two Month Notice that was given when the current landlord purchased the rental house from the previous landlord. If the tenants had a 10 year fixed term tenancy, it would have been raised at that hearing. Their reasons for disputing it were as follows: the landlords advised at the time of viewing the rental home that the tenants could remain in the rental unit; the landlords indicated that renting to students would provide the landlords with more rental revenue; the landlords did not serve the tenants with a sufficient number of documents regarding the sale and were not notarized. There was no indication from the tenants or the landlords in that Decision that even mentioned a fixed-term. Certainly if there was a fixed-term made in 2016 it would have been raised at the previous hearing in 2020.

I prefer the testimony of the witness who is the previous owner and landlord, who testified that there was no 10 year fixed term. I find that a 10 year fixed term for a specific amount of rent for that 10 year term was not made by the landlord. The tenancy agreement provided at the last hearing is not a tenancy agreement at all, but a Shelter Document for the benefit of a government ministry to assist the tenants with paying rent. The same document has been provided for this hearing.

The landlord testified that the previous order of possession was not acted upon due to COVID and the tenant wanted to stay indicating that her son was ill, but it's been long enough. The landlord obviously wanted to use the rental unit for the parents in 2020 and still wants that, which is totally legal. Considering the evidence and the testimony, I find that the landlord has demonstrated good faith intent to use the rental unit for the use of the landlord's parents or the parent's of the landlord's spouse, and I dismiss the tenants' application to cancel the Notice.

The *Act* also specifies that an incorrect effective date contained in a notice to end a tenancy is corrected to the nearest date that complies with the law. The Notice is dated June 7, 2023. Since rent is payable on the 1st day of each month, the effective date is changed to August 31, 2023.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord effective on the corrected date of vacancy of August 31, 2023 at 1:00 p.m. The tenants must be served with the order, which may be filed in the Supreme court of British Columbia for enforcement.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on August 31, 2023.

This order is final and binding and may be enforced.

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: July 14, 2023

Residential Tenancy Branch