



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APQ MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Two Month Notice to End Tenancy For Landlord's Use of Property.

The tenant attended the hearing with an Articled Student and Principal. The landlord attended and was represented by an agent. The landlord's agent and the tenant gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence that 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 dated May 23, 2023 was issued in accordance with the *Residential Tenancy Act*, and in good faith?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2018 and expired on September 1, 2018 for rent in the amount of \$750.00 payable on the 1st day of each month. The tenancy was renewed for a fixed term to begin on September 1, 2018 and expiring on December 31, 2018 for rent in the amount of \$760.00 payable on the 1st day of each month. Copies of both tenancy agreements have been provided for

this hearing, and there are no rental arrears. On February 1, 2018 the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a small apartment, and the landlord does not reside on the property.

The landlord's agent further testified that on May 23, 2023 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) by posting it to the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated May 23, 2023 and contains an effective date of vacancy of July 31, 2023. The reason for issuing it states: The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord is the owner of the landlord company, and his wife is expecting twins and has a 2 year old child. The house he lives in has limited space and the landlord will be losing his home office for the twins. The landlord looked at possibly renting an office downtown, but this is a better opportunity; the landlord wants to use the rental unit as an extension of his home by using it as his home office and may have to stay there from time to time as an alternate location to do work and sleep if necessary.

The landlord's agent refutes the Affidavit provided by the tenant for this hearing. It states that a lady was evicted above this rental unit a number of months prior to receiving the Notice, making it sound like it was for renovations. However, the landlord has provided evidence of the lady moving into a care facility, and thanked the landlord for his support and help.

The Affidavit also states that the landlord tried to intimidate the tenant. An electronic copy of the call has been provided for this hearing, during which the landlord didn't raise his voice, but requested to meet the tenant to discuss settlement. The tenant refused. The tenant's behaviour, including nasty inappropriate emails, has resulted in the landlord getting police involved. The landlord intended to discuss monetary compensation to the tenant to leave the property, without an amount, but to determine what options there were. Once police spoke to the tenant, the emails stopped. The landlord's agent indicated in the call that the tenant will lose at arbitration, which was an opinion, not an attempt to intimidate.

The landlord's agent is aware of Residential Tenancy Policy Guideline 2A, and testified that "occupy" includes an extension of the landlord's home. There is no definition of what's an extension. The landlord doesn't plan to renovate, but put a desk and small bed in the rental unit, purely as an extension of his home use.

The rental building has a storage room in the basement, but it is not an office, has no real ventilation, and contains a bathroom for a caretaker when he's in the building. It's a storage room with limited height and is not a place someone would want to spend time in; the landlord just wants space for a bed and office.

The landlord had a vacant unit which was rented in January, 2023, then the landlord found out about twins which put some stress on the landlord's situation. Other units owned by the landlord are on annual fixed term tenancies.

The tenant's testimony is in the form of an Affidavit, which the tenant affirmed is true to the best of the tenant's knowledge and belief. The tenant also testified that another unit was renovated for 6 months and was vacant and ready for someone to move into 3 weeks prior to receiving the Notice, however that was an error; it looked vacant.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenant has made allegations that are completely untrue. The landlord made a sincere offer to try to meet to resolve this without a hearing but the tenant had no interest. The Application and Affidavit are incorrect. The tenant never noticed that the other unit was re-rented in February. After the landlord provided a copy of the tenancy agreement to show that, the tenant harassed the landlord who had to call police. The landlord is working in good faith, has not done anything wrong, and is trying to resolve his family situation to have a place to work and sleep if necessary as an extension of the family home. The tenant hasn't tried to find a place, and the basement is not suitable for someone to sleep in or work in, but just for storage.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

The onus is on the landlord to prove good faith, with no intention to deceive or avoid obligations. The Policy Guideline describes non-residential use, meaning for occupation. The landlord does not seek to move into the rental unit, and there is no evidence from the landlord that supports that he intends to occupy the rental unit for residential purposes. Attempts by the landlord were not made in good faith.

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*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the landlord must establish good faith intent to use the rental unit for the purpose contained in the Notice.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*.

The parties have referred to Residential Tenancy Policy Guideline 2A, which states, in part:

“Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy under sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.”

The landlord’s agent testified that the landlord does not intend to live in the rental unit, but to use it as office space and a place to sleep if needed, as an extension of his residence. I accept that the landlord works from home. The Policy Guideline goes on to say:

“If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.”

This rental unit is not a basement suite, but an apartment in a building owned by the landlord, who does not reside on the property.

The Supreme Court, in *Schuld v Niu*, 2019 BCSC 949 held that a landlord who is an individual may end a tenancy in respect or a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. “Occupy” and “reside” have different meanings. Since the Act does not require a landlord to “reside”

in the rental unit, whether the landlord actually resided or lived in the rental unit is not relevant.

The Supreme Court has also held that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit., and that the test to be applied is whether the landlord had a fundamentally dishonest motive or purpose affecting the honesty of his or her intention to occupy the premises.

Legal Counsel for the tenant submits that the landlord is attempting to evict the tenant unlawfully to avoid the landlord's obligations established by the *Act*, but has not indicated what obligations the landlord is attempting to avoid. Further, the submissions also indicate that the landlord does not, and cannot, establish that ending the tenancy is done in good faith without deception or ulterior motive, but has not indicated what ulterior motive the landlord may have.

The landlord's agent testified that other units were vacant, but prior to learning of the landlord's growing family, fixed-term tenancy agreements were in place. I have no reason to disbelieve that.

In the circumstances, I find that the landlord is acting honestly, with no ulterior motive, and I dismiss the tenant's application to cancel the Notice.

The *Residential Tenancy Act* 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. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

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: August 11, 2023

Residential Tenancy Branch