



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNL, FFT
 LL: OPL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants’ Application for Dispute Resolution was made on May 4, 2023 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a Two Month Notice to End Tenancy for Landlord’s Use of the Property dated May 3, 2023 (the “Two Month Notice”); and
- an order granting the return of the filing fee.

The Landlords’ Application for Dispute Resolution was made on May 12, 2023 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for the Landlord based on the Two Month Notice; and
- an order granting the recovery of the filing fee.

The Tenants, the Landlords, and an Interpreter assisting the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Applications and evidence packages. As there were no issues raised relating to service, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

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

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?
4. Are the Landlords entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2012. Currently, the Tenant pays rent in the amount of \$2,025.00 which is due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 and a pet deposit in the amount of \$533.00 which the Landlords continue to hold. The tenancy is still ongoing.

The Landlords testified that they served the Tenants in person on May 3, 2023 with the Two Month Notice dated May 3, 2023 with an effective vacancy date of July 31, 2023. The Tenants confirmed having received the Two Month Notice on May 3, 2023. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"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 souse)."

The Landlord N.N. stated that she was hospitalized in January 2023 and provided pictures in support. N.N stated that she is out of Hospital now, however, is wanting to occupy the rental unit as it is closer to the hospital in case she were to have any further health issues. N.N. also stated that she regularly attends the temple located next to the rental unit and she also requires parking, which would be available to her if she gained vacant possession of the rental unit.

The Tenants stated that the Landlords had previously served the Tenants with a Two Month Notice which was successfully disputed by the Tenants. In the May 2, 2023 Decision, the Arbitrator found that the Landlords did not serve the previous Two Month Notice in good faith. The Tenants stated that less than 12 hours after having received the May 2, 2023 Decision from the RTB, the Landlords served the May 3, 2023 Two Month Notice. The Tenants stated that the May 3, 2023 Two Month Notice is just a continuation of the Landlords' attempts at ending the tenancy as a result of the Tenants not consenting to having their rent increased from \$2,025.00 to the \$2,800.00 that had been requested by the Landlords. The Tenants referred to a text message from the Landlords which was submitted into evidence;

"Owner Nancy says if you cannot pay \$2800 starting January 1, 2023 then owner Nancy will give you Two Month Notice to End Tenancy for Landlord's Use of Property. Tomorrow I will write the form and then I will schedule an appointment with you to give you the notice".

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may 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.

The Landlords served the Tenants in person with the Two Month Notice on May 3, 2023. The Tenants confirmed having received the notice on May 3, 2023. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires 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: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. 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 (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

In this case, I find that the Landlords had previously served the Tenants with a Two Month Notice which was successfully disputed by the Tenants. In the May 2, 2023 Decision, the Arbitrator found that the Landlords did not serve the previous Two Month Notice in good faith. I find that the Landlords served the May 3, 2023 Two Month Notice immediately after receiving the May 2, 2023 Decision. I find that this is another attempt by the Landlords to end the tenancy the day after having been unsuccessful in their previous attempt. I find that the Tenants have provided sufficient evidence to demonstrate that the Landlords' motivation to ending the tenancy is based on the Tenants not consenting to having their rent increased from \$2,025.00 to the \$2,800.00.

I do not accept the Landlord's argument that they intend on occupying the rental unit on the basis that it is more conveniently located closer to the hospital, temple, and offers parking. I therefore dismiss the Landlords' Application without leave to reapply.

In light of the above, I cancel the Two Month Notice, dated May 3, 2023. I order the tenancy to continue until ended in accordance with the Act.

As the Tenants have been successful with their Application to cancel the Two Month Notice, I find they are entitled to recover the **\$100.00** filing fee paid to make the Application. I order that this amount may be deducted from the next month's rent.

The Landlords are cautioned that if repeated Notices to End Tenancy are issued to the Tenants in bad faith, it may constitute a breach of the Tenants quiet enjoyment.

Conclusion

The Tenants' application is successful. The Two Month Notice issued by the Landlord dated May 3, 2023 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to deduct \$100.00 from the next month's rent for recovery of the filing fee.

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 30, 2023

Residential Tenancy Branch