



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT
 OPL, FFL

Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The landlord applied for:

- an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to sections 49 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

The tenant applied for:

- cancellation of the landlord's Two Month Notice to End Tenancy Issued for Landlord's Use of Property (the Two Month Notice) pursuant to section 49 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

RK (the “Landlord”) and JF, the Landlord's advocate appeared for the Landlord. MS (the “Tenant”) and MK, the Tenant's lawyer appeared for the Tenant.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties were in attendance, I confirmed that there were no issues with service of the parties' Proceeding Packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

Issues to be Decided

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenancy began on January 1, 2022. Monthly rent is \$1,400.00 payable on the last day of each month. The Landlord collected a security deposit in the amount of \$700.00 which they continue to hold in trust.

The parties agreed that the Landlord served the Tenant with the Two Month Notice by registered mail, and it was received by the Tenant on April 24, 2023.

The Two Month Notice is submitted into evidence. The Two Month Notice indicate that the reason for ending the tenancy is that the rental unit will be occupied by the child of the Landlord or the Landlord's spouse.

JF testified that the Two Month Notice was issued because the Landlord's family needs more space. The Landlord's son is 19 years old and has an active social life with his friends which is creating a disturbance in the family dynamics. The Landlord works from home and often has clients in the home. The Landlord's son's presence is causing disturbances to their work.

JF submitted that the Landlord's son has requested his own living space and independence. JF submitted that the Landlord is aware of the legal ramifications of the

Two Month Notice and has issued the Two Month Notice in good faith. The Landlord and their family feel that this will be the best situation for everyone.

JF submitted that the rental unit is a two-bedroom unit, and the additional bedroom will be used by the Landlord's son as a guest bedroom for his friends and for any family that comes to visit from out of town.

JF drew my attention to an Affidavit of the Landlord's son which is included in the evidence and indicates their intention to reside in the rental property. JF also noted that the Landlord has also provided an Affidavit.

In response to JF's submissions, MK submitted that the Tenant resides at the rental property with her two young children and has been a responsible Tenant throughout the tenancy.

MK submitted that in October 2022 the Landlord attempted to increase rent from \$1,400.00 to \$1,900.00; however, the Tenant refused. Shortly thereafter, the Landlord advised the Tenant that they were required to move out in November. However, the Tenant did not respond as the notice did not meet the requirements of the Act. On November 20, 2022, the Landlord issued a One Month Notice to End Tenancy on the grounds that the Tenant had allowed an unreasonable number of occupants in the suite. A hearing took place on April 6, 2023, and the Arbitrator decided in favour of the Tenant and cancelled the One Month Notice.

On April 19th, 2023, the Landlord served the Tenant with a Two Month Notice. MK submitted that the Landlord has been repeatedly trying to force the Tenant out of the rental unit which supports that the Landlord is not acting honestly or in good faith. MK submitted that the house in question has eight bedrooms and seven bathrooms. There are three bedrooms in the basement and five on the main floor. The basement is divided into two units; a one bedroom, and a two bedroom.

MK noted that there are four members of the Landlord residing in the house. The Landlord, their husband, and their two children. MK submitted that this means that currently there are two unoccupied bedrooms on the main level. MK submitted that the contention that the family needs more space is not founded.

MK submitted that while the Landlord's son would like to have friends over and use the space for social activities, residential spaces are not meant for social activities.

MK noted that the Landlord is running a business out of her home; however, in MK's submissions, if the Landlord is using her home for commercial activities, this is not the intent of the Act. MK suggested that the Landlord can meet her clients in a spare room and does not need to require the Tenant and her family to move out so she can use her space for commercial purposes.

Finally, MK submitted that there are two basement suites. MK noted that the Landlord's son is single. MK submitted that the Landlord could have issued the Two Month Notice to the one-bedroom suite Tenant.

Keeping in mind the previous instances, MK submitted that it is their position that the Landlord's intent is not in keeping with the good faith requirement. The one bedroom would have been more suitable for the son.

In response to MK's submissions, the Landlord testified that the one-bedroom suite is occupied by their nephew, and it is their preference to allow their family member to continue to reside on the property.

Analysis

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Based on the evidence and testimony of the parties, I find that the Tenant was served with the Two Month Notice on April 24, 2023.

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act states that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the Tenant disputed this notice on May 8, 2023, and since I have found that the Two Month Notice was served to the Tenant on April 24, 2023, I find that the Tenant has applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act. I find that the landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenant disputes that the Notice is being issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to

defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member (the “Policy Guideline”) provides further guidance as to the assessment of good faith in relation to the issuance of a Two Month Notice as is the case here. The Policy Guideline states:

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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not 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.

MK argued that there has been a pattern of behaviour on the part of the Landlord to remove the Tenant from the rental property. I have considered the submissions and evidence provided by the Tenant and their lawyer in this regard, and I find that I am not satisfied that the Tenant’s allegations support that the Landlord did not issue the Two Month Notice in good faith.

To the contrary, I find that the Landlord has provided a reasonable and consistent explanation regarding why the Two Month Notice was issued which is supported by the Affidavit of the Landlord and the Landlord's son.

I have further considered that there are two suites in the basement of the home; however, I find it reasonable that the Landlord's preference is to continue the tenancy that they have in place with their nephew and serve the Two Month Notice to the Tenant who is not family.

I also accept that the residence consists of five bedrooms on the upper level; however, I find the Landlord's explanation that their son's social activities are causing a disturbance to their work environment as well as their family dynamic are reasonable and consistent with their intention to afford their son more space and greater independence in the basement suite. Based on this, I accept that the Landlord's true intention is to allow their son to reside in the basement suite to the benefit of their family dynamic and the Landlord's ability to work from her home.

Ultimately, I find that the Landlord has met the onus which is upon them to prove on a balance of probabilities that the Two Month Notice was issued in good faith and their close family member intends to occupy the rental unit for a period of at least six months in accordance with the Act.

Pursuant to section 55(1) of the Act, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and,
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Two Month Notice to End Tenancy dated February 1, 2023, I find that the Notice was completed in accordance with the requirements of section 52 of the Act.

Based on the foregoing, the Landlord is granted an order of possession that will be effective not later than August 31, 2023 at 1:00 p.m.

For the above reasons, the Tenant's application for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

As the Tenant was unsuccessful in their application, they are not entitled to recover the filing fee paid for this application from the Landlord.

As the Landlord was successful in their application, they are entitled to recover the filing fee paid for this application from the Tenant. The Landlord continues to hold the Tenant's security deposit in the amount of \$700.00. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$100.00 from the Tenant's security deposit to recover the filing fee paid for this application.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord is granted an order to retain \$100.00 from the Tenant's security deposit to recover the filing fee paid for this application.

The Landlord is granted an order of possession which will be effective not later than August 31, 2023, at 1:00 p.m. after service on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and 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: August 18, 2023

Residential Tenancy Branch