



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes CNL, PSF, LRE, LAT, RPP, OLC, FFT, FFT

Introduction

The tenant, by way of two applications for dispute resolution made under the *Residential Tenancy Act* (the “Act”), seeks various relief. The primary claim for relief, and the one addressed in this decision, is for an order cancelling a *Two Month Notice to End Tenancy for Landlord’s Use of Property* (the “Notice”).

The remainder six claims are dismissed without leave to reapply pursuant to Rule 2.3 of the Rules of Procedure.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If the tenant is not entitled to such an order, is the landlord entitled to an order of possession of the rental unit?
3. Is the tenant entitled to recover the cost of their two application fees?

Evidence and Analysis

While I have carefully considered the parties’ testimony, arguments, submissions, and documentary evidence, I will only refer to evidence that is relevant and necessary to explain the decision.

The tenancy began on May 1, 2018. Monthly rent is \$2,000. There is a \$900 security deposit attached this tenancy. There is a written tenancy agreement in evidence.

On May 25, 2023, the landlord served the Notice on the tenant by leaving it in the tenant's mailbox. A copy of the Notice was in evidence and, having reviewed the Notice, I find that it complies with the form and content requirements of section 52 of the Act.

Landlord's counsel provided a brief background about the property, which is a detached house containing the rental unit. The property was built in 2004 and the landlords (there are two landlords, but only is a party to this proceeding) built the home for their use. There is an upper level, where the rental unit is, and there is a lower level which is used as a short-term rental (e.g., Airbnb) property.

One of the landlords has lived in another property helping with raising children and with an elderly mother. However, with those children now adults, the husband having passed away, the family is simply living in "very cramped" accommodations. The landlord wants to move out of that property and into the rental unit. Their intention all along was to move back into the property when circumstances were right.

It should be noted that the parties were in a previous dispute concerning late payment of rent. That matter went before a hearing on May 2, 2023, and resulted in the cancelling of a notice to end tenancy for cause. Landlord's counsel argued that that dispute is in no way related to the dispute before me.

Landlord's counsel briefly summarized the facts regarding other properties owned by the landlords and why those properties are unsuitable for the landlord's intended occupancy.

In summary, the landlord wants to move into and occupy the property. And the Notice was given in good faith. The landlord wants to continue his life now that his familial obligations are over. And, to obtain relief from a long time of living in close quarters.

A total of five affidavits were submitted into evidence, and the two landlords confirmed on the record that counsel's presentation of the facts were accurate. The landlords have confirmed that they are fully aware of the (section 51(2)) financial penalty consequences if they do not occupy the rental unit as described in the Notice.

The tenant testified about his background. He is a physiotherapist. He lives in the rental unit with his partner, and, with his parents (who visit 6-7 months a year). Before covid, the tenant-landlord relationship was healthy and happy. Covid changed everything, including making the housing market become more difficult and rents increased.

The tenant further testified that the issuing of the Notice is the landlord's calculated attempt to get him to move out so that they can rent out the property at market rent. He argued that this started to happen when the first notice to end tenancy was given. Once that attempt failed, the present Notice was issued. The tenant did not, I note, provide any argument, submission, or evidence as to what market rent would potentially be on the rental unit.

Both landlord's counsel and the tenant briefly conducted cross-examinations. However, I do not find that either the questions asked or the answers to those questions of relevance in this proceeding.

When a tenant disputes a notice to end a tenancy, the onus falls upon the landlord who issued the notice to establish, on a balance of probabilities, the reason for issuing the notice to end tenancy.

In this dispute, the landlord issued the Notice pursuant to subsection 49(3) of the Act so that a landlord "who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." The landlord's affidavits and counsel's argument and submissions—affirmed as being accurate by the landlords—support this stated reason for ending the tenancy.

However, the tenant disputes the Notice on the basis that it was not issued in good faith.

“Good faith” is a legal term that means a party is acting honestly and without intention to defraud or avoid their obligations under the law or agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827), the Supreme Court of British Columbia ruled that a claim of good faith requires honesty of intention and absence of ulterior motives. This means that a landlord must honestly intend to use the rental unit for the stated purpose on the notice to end tenancy.

If a tenant raises the issue of an ulterior motive or purpose for ending the tenancy, the burden is on the landlord to prove that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant accuses the landlord of not acting in good faith, the tenant may provide evidence to support their claim.

In this case, the tenant argued that the landlord wants to evict him so that the landlords can rent out the suite at a higher rent. However, he has not provided persuasive evidence to show such an intention. Previous rent increases do not, in my opinion, suggest such an intention. Nor has the tenant demonstrated what the “market rent” would be on such a property. Further, I find that the previous dispute concerning a notice to end tenancy for cause to be unrelated to this dispute. That dispute concerned repeated late payment of rent, and the notice to end tenancy was ultimately cancelled.

In summary, I do not believe that the tenant has provided sufficient evidence to prove that the landlord is acting in bad faith by issuing the Notice. Further, the fact that the landlord owns multiple properties does not affect my conclusion regarding the landlord's intention to occupy the rental unit. If the other properties are unsuitable in meeting the landlord's intended living plans or expectations, the landlord is not required to occupy a property that does not work for them.

Finally, the tenant argued that the inconsistency in one of the parties' affidavits about when they became aware of the uncle's (that is, the landlord's) intention to move into the rental unit reflects, or is evidence of, the bad faith intention of the landlord. With respect, I disagree with this interpretation of the evidence. The landlord was talking about moving into the rental unit since January 2023 after the passing of their parent. But the landlord took the next decisive step in making that intention a reality but directing the niece to issue the Notice in May 2023.

Having considered the evidence, testimony, and arguments of the parties, I am not persuaded that the landlord has issued the Notice in bad faith. Accordingly, I dismiss the tenant's application for an order cancelling the Notice and thus I uphold the Notice.

Pursuant to subsection 55(1) of the Act the landlord is granted an order of possession of the rental unit. A copy of the order of possession is issued with this decision to landlord's counsel. The landlord must serve a copy of the order of possession upon the tenant within 2 days of receiving this decision.

Given the non-urgent nature by which the tenancy is being ended, I exercise my discretion under subsection 55(3) of the Act and order that the tenancy end on September 30, 2023. The order of possession reflects that date.

The tenant is entitled to compensation under [section 51\(1\)](#) of the Act.

Conclusion

For the reasons set out above, the tenant's application is dismissed without leave to reapply. The landlord is granted an order of possession and the tenancy is ordered ended on September 30, 2023.

This decision is made on delegated authority under section 9.1(1) of the Act. A party may appeal this decision under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: August 30, 2023

Residential Tenancy Branch