



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

On June 6, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with S.M. attending as an advocate for the Tenant. The Landlord attended the hearing, with J.W. attending as a co-owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Tenant's Notice of Hearing and evidence package was discussed, and there were no issues concerning service. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant by courier on July 28, 2023. S.M. advised that this evidence was actually attached to the Tenant's door and that the Tenant received this on July 29, 2023. While he stated that this evidence was served late contrary to the timeframe requirements of Rule 3.15 of the Rules of Procedure, he then confirmed that they had reviewed this evidence and were prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2018, that rent was currently established at an amount of \$2,537.50 per month, and that it was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration.

They also agreed that the Notice was served by hand on May 26, 2023. The reason the Notice was served is because "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)." As well, it was indicated on the Notice that "The landlord or the landlord's spouse" would be the person(s) specifically occupying the rental unit. The effective end date of the tenancy was noted as July 31, 2023, on the Notice.

J.W. advised that the Landlord has owned the rental unit for 16 years and that they lived there for four years. She stated that her parent is aging, that she must be more available for her, and that the rental unit is closer. As well, there is a ground level suite in the rental unit that could be used for this parent. She cited the challenges of the Landlord's business, and the proximity of the rental unit to that business, as other reasons the Landlord wanted to use the property. She referenced the documentary

evidence submitted to demonstrate the reduction in travel time from the rental unit to this business.

The Landlord advised that his business has lost 60% of its staff in the last six months, which has forced him to go back to work there. As a majority of his business projects are closer to the rental unit, he will save hours of travel time by occupying the rental unit.

They confirmed that they own the property that they currently reside in, and they had been considering selling this property, but they have not confirmed this intention yet. However, their intention when they served the Notice was to move into the rental unit as their primary residence as it would be the more logical financial decision. The Landlord testified that he had decided approximately a month or two prior to serving the Notice that it was their intention to move in and occupy the rental unit, but then he stated that serving the Notice was their last option.

Regarding the Notice of Rent Increase form dated May 3, 2023, J.W. advised that this was served because they did not know that they would need to move into the rental unit. She stated that they had brought in realtors to assess the property and to determine what would be their next best course of action.

The Landlord advised that it was their last option to move into the rental unit. He then testified that realtors were brought in to assess the property in June 2023, but then he contradictorily stated that they were brought in prior to the Notice being served.

S.M. questioned the Landlord if he ever mentioned to the Tenant that it was their intention to move into the rental unit prior to service of the Notice, and the Landlord confirmed that he never advised the Tenant of this desire. S.M. then stated that the Landlord had a conversation with the Tenant on May 25, 2023, about raising the rent \$1,000.00 per month, and the Landlord acknowledged that he did have a conversation about this, but merely suggested that he informed the Tenant that rent needs to be \$3,500.00 per month to be financially viable for him. S.M. submitted that the Tenant refused this suggestion by text message, and the Landlord then served the Notice the next day.

The Landlord testified that the decision to move into the rental unit was on the table prior to service of the Notice, even though he did not verbally tell this to the Tenant over the phone. He stated that he did tell the Tenant they might sell the rental unit though.

S.M. asked the Landlord what their intention was for the property that they live in, and the Landlord indicated that they would sell it. S.M. then questioned why they would not sell that property before serving the Notice. As well, he questioned if the Landlord would leave the property empty after moving into the rental unit.

J.W. testified that they will re-evaluate what they will do with that property once they move into the rental unit and that it should sell quickly. The Landlord advised that the property would be staged and sold.

S.M. submitted that the Landlord's good faith intention when serving the Notice is suspect, and that the Landlord did not submit any documentary evidence to support their submissions regarding their financial situation, the state of their business, or the health of their parent.

The Landlord reiterated that the Notice was served not as a bullying tactic, but due to their current financial situation. He submitted that if they were mortgage free, the situation would be different. As well, he stated that they did not realize that any documentary evidence to support their testimony would be relevant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice, in considering the Landlord's reasons for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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.

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and submissions before me, I acknowledge that there may be some legitimate reasons for why the Landlord wanted to occupy the rental unit. However, I do not find that the Landlord has submitted any documentary evidence to support the validity of those submissions. Given that the Tenant has made submissions that would call the Landlord's good faith intention to occupy the rental unit prior to service of the Notice into question, and given the inconsistencies provided in the Landlord's testimony, in conjunction with a lack of documentary evidence, I do not find that the Landlord has demonstrated with compelling or persuasive evidence that the Notice was served in good faith.

Furthermore, I note that the Landlord testified that he had known approximately one or two months prior to serving the Notice that their intention was to move in and occupy the rental unit; however, this testimony changed during the hearing. Regardless, the undisputed evidence is that the Landlord served a Notice of Rent Increase form dated May 5, 2023. While the *Act* only requires three months notice for this rent increase to take effect, for some reason the Landlord indicated that the increase would be effective on November 1, 2023. Had the Landlord truly had the intention to move in prior to service of the Notice on May 26, 2023, it is not logical why the Landlord would have bothered serving the Notice of Rent Increase form a few weeks prior. In addition, it is not clear why he would have had this rent increase take effect well after he would have theoretically had vacant possession of the rental unit. I find that this causes me to doubt the reliability of the Landlord's testimony.

Ultimately, I am not satisfied that the Landlord has established any grounds to justify service of the Notice. Therefore, I find that the Notice of May 26, 2023, is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent in satisfaction of this claim.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of May 26, 2023, to be cancelled and of no force or effect.

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 9, 2023

Residential Tenancy Branch