



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL-MT, RP, FFT
OPC**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Act.

The tenants applied for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- An order for repairs to be made to the unit, site or property pursuant to section 32; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55.

The landlord and both tenants attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of the respective applications and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Preliminary Issues

- 1 Month Notice to End Tenancy for Cause not served to tenants

At the commencement of the hearing, I inquired whether the landlord served a form #RTB-33 form (1 Month Notice to End Tenancy for Cause) upon the tenants. Both parties gave testimony that the landlord served the tenants with an unsigned form #RTB-8 (mutual agreement to end tenancy) on March 8th. I determined that the landlord did not serve a 1 Month Notice to End Tenancy for Cause upon the tenants and the landlord's application seeking an Order of Possession under section 47 was dismissed without leave to reapply.

- Additional applicants removed

On the tenant's application, the tenants named their children as tenant/applicants. As the tenants' children did not sign the tenancy agreement, they are considered occupants and not tenants and have no rights or obligations under the Act. As such, I removed their names from the application for dispute resolution and this decision.

- Severing of issues

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

- More time to dispute landlord's notice to end tenancy

The tenants acknowledge receiving the landlord's 2 Month Notice to End Tenancy for Landlord's Use on March 31, 2023. They filed an application to dispute the Notice on May 11, 2023, outside the 15-day time limit required by section 49(8)(a) of the Act. The tenants testified that when they received the Notice, they believed that the landlord had visitors who needed the rental unit and the tenants actively began searching for a new accommodation. Their applications seeking nearby rentals were received poorly because the landlord gave prospective landlords false information that they hadn't paid rent in 2 months. Copies of text messages between the parties and proof of payments were provided as evidence by the tenants. The landlord gave no testimony to dispute this allegation.

I find that reason for the delay in filing the application to dispute the landlord's notice to end tenancy qualifies as an exceptional circumstance and I extend the time to dispute the notice to end tenancy in accordance with section 66 of the Act.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can the tenants recover their filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The landlord testified that she lived with her husband and child in her parents' house which is close by, a 3-bedroom townhouse. In April, her sister-in-law came to live with them, making the extended household 10 people. That many people in the house have led to fights between the various members of the family, including the landlord's husband and the landlord's brother. Police were called and the landlord moved into a basement suite in Langley with her husband and 6-year-old son. The landlord finds it difficult to drop her child off at school and go to work when their residence in Langley is so far away.

The landlord served the 2 Month Notice to End Tenancy for Landlord's Use on March 31, 2023. The reason for ending the tenancy was that the rental unit would be occupied by a close family member. The close family member named on the for is the child of the landlord or the landlord's spouse. The landlord testified that her child is 6-and-a-half-year-old and will live in the rental unit with the landlord and her husband.

The tenants testified that the landlord first gave them verbal notice that they wanted to end the tenancy on March 1, 2023. The landlord had promised the tenants that they had a long-term rental and it's been stressful having to leave since their children have had to change schools multiple times. The tenants say the landlord has bought another house but provided no evidence of it.

The landlord has given them many different stories about why the landlord needs the house back. First, it was for her brother, then it was for guests coming from India on student visas. Then on August 10th, the landlord texted the tenants telling them she is permanently moving to India and wants the tenants to remain living in the rental unit.

This hearing is the first time the tenants have heard the landlord saying they want the unit back for themselves. All previous communication with them was that it was for members of their extended family or students to move in.

The landlord gave further testimony saying that the August 10th text message came from her husband who wanted to return to India and not herself. This came after the landlord's husband had a fight with the landlord's brother.

Analysis

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord or a close family member intends, in good faith, to occupy the unit. The concept of good faith is examined in Residential Tenancy Policy Guideline 2A. It states the following:

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)).

For the following reasons, I find the landlords does not intend in good faith to occupy the rental unit.

I find the series of text messages sent to the tenants on August 10, 2023 to be the most compelling evidence of the landlord's lack of commitment to occupy the rental unit. While the landlord testified that the author of the texts was her husband, I have to consider that what the husband wrote is indicative of the family's intentions. It was made clear that the landlord's father-in-law was sick in India; the landlord's family wants to return to India permanently, and the landlord (or her husband) wants the tenants to continue renting the unit.

Although the landlord testified that it was her husband that wants to return to India and not her, I am not satisfied this is true. The landlord's last text in the exchange states, "*I am really apologies for this I was really confused on that time so my husband is decided that we not gonna go india...*" (reproduced as written). Nowhere in this text does the landlord acknowledge that the previous texts were from her husband.

I have also considered the texts between March 30th and March 31st where the landlord seeks a repair of the waste disposal and the landlord responds by telling the tenants to find another place to live. While this exchange does not explicitly indicate the landlord is seeking to evict the tenants to avoid repairing the unit, this is compelling evidence that avoiding repairs is factored into the landlord's decision to end the tenancy.

For the above reasons, I find the landlord has not shown good faith in issuing the notice to end tenancy. Consequently, I cancel the Notice and order that this tenancy shall continue until it is ended in accordance with the Act.

As the tenant's application was successful, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting

provisions of section 72, the tenants may reduce a single payment of rent owing to the landlord by \$100.00.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it ends in accordance with the Act.

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: September 01, 2023

Residential Tenancy Branch