



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNL, MNDCT, OLC, FFT
CNR, FFT**

Landlord: **OPL, FFL**

Introduction

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

The tenant filed 4 applications, seeking:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord sought:

- An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord's Use, pursuant to sections 49 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing with an advocate, MH. The landlord was represented at the hearing by counsel, WH and the landlord's real estate agent, MY. As both parties were present, service was confirmed. The parties each confirmed receipt of the

application 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

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. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notices 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.

Although I advised the parties that I would determine the validity of all of the landlord's Notices to End Tenancy; the allotted one hour time had ended before merits of the landlord's Notices to End Tenancy for unpaid rent could be heard. As such, I advised the parties that I would make a determination on the 2 Month Notice to End Tenancy for Landlord's Use only. If that Notice were to be upheld and the tenancy continued, a reconvened date would be sent out to parties to adjudicate the 10 Day Notices to End Tenancy for Unpaid Rent/Utilities.

Issue(s) to be Decided

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

Can either party 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 following facts are undisputed:

- On April 25, 2023, the landlord sent the tenant a two month notice to end tenancy for landlord's use via registered mail.

- The tenant filed an application to dispute the notice on May 9, 2023, within the required 15 day time period.
- The reason for ending the tenancy was because all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
- The effective date was June 30, 2023.

The landlord called R.M., the purchaser of the rental unit as his first witness. The witness testified that she currently owns her residence in a different neighbourhood with her partner. Her partner works in health care and wanted to live in this particular neighbourhood close to his work. The building also has amenities such as a gym and a workshop which the purchaser found attractive. The purchaser was aware the rental unit was tenanted and the purchaser signed a tenant occupied property – buyer's notice to seller for vacant possession form on April 21, 2023 asking for vacant possession of the unit for July 31, 2023. Due to the tenant filing the notice to end tenancy, the purchaser agreed to extend the possession date to October 16, 2023. She wants to take possession of the unit as soon as possible but wants to be accommodating to the current tenant.

On cross examination, the witness testified that they intend on renting out their current residence at below market rates to a health care worker. A tenancy agreement has not yet been signed with that person because she is awaiting the outcome of this hearing. The rental unit occupied by the tenant is more accessible to public transit, walking and biking to work than their current residence. She denies that there is a financial incentive to purchasing the subject rental unit. The witness further testified that the mortgage she and her partner are getting is conditional on them using the subject rental unit as a primary residence.

The witness acknowledged that the condition of the rental unit is not pristine and that it will require some renovations to make it more liveable for her and her partner. She intends on taking possession as soon as possible for this reason.

The landlord's second witness was the landlord's selling agent. The landlord is in Hong Kong and her mother in Hong Kong is over 90 years old and has health issues. The reason the landlord is selling is to fund medical expenses as the landlord has no medical insurance in Hong Kong. The buyer and seller do not know one another.

On Cross exam, that witness testified she was not aware of the verbal agreement alleged by the tenant's agent to reduce the rent by \$1,000.00 per month to pay taxes and find employees for the landlord. She is also not aware of any letter from the landlord's daughter to the tenant that the tenant's agent referred to during cross exam.

When asked why the notice to end tenancy had an effective date of June 30th while the buyer's notice sought vacant possession for July 31st, the landlord's agent testified that the landlord wanted to ensure the tenant had a full 2 months notice from when the notice was given. Lastly, the witness testified that the landlord had to reduce the selling price of the unit by \$25,000.00 due to the tenant's disputing of the notice to end tenancy and delaying the sale.

The tenant's agent submits that the purchaser of the unit has not shown good faith in ending the tenancy for occupying the rental unit. The agent points to the effective date of the notice to end tenancy being a month before the occupancy date given by the purchaser on the buyer's notice. The agent argues that this extra month where the unit will be vacant is indicative of the purchaser's intent to renovate the unit and not occupy it immediately. The agent argues that it would have been appropriate to give her until July 31st to move out rather than June 30th.

The tenant's agent also questions the agreements that were in place between the original landlord and the tenant. He argues that they agreed the tenant would do accounting work for the landlord in exchange for a rent reduction and an agreement that the tenant could continue residing in the rental unit for the long term.

Lastly, the tenant's agent argues that the purchaser was financially incentivized to purchase this property. No evidence has been presented to substantiate the purchaser's intent to move in. The agent questions whether the purchaser intends on making minor renovations to the unit before re-renting it and not move herself in.

Analysis

The notice to end tenancy is deemed served on April 30, 2023, the fifth day after being sent via registered mail, pursuant to sections 88 and 90 of the Act. The tenant filed an application to dispute the notice on May 9, 2023 within 15 days as required by section 49 of the Act.

Pursuant to section 49(5)(c)(i), a landlord may end a tenancy in respect of a rental unit if the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline PG-2A [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member] provides guidance to landlords and tenants to understand the relevant issues around section 49.

B. 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.

...

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.

I have carefully considered the testimony of the parties and witnesses and reviewed the documentary evidence provided. Based on my analysis that follows, I find the purchaser of the unit intends in good faith to occupy the rental unit. I do not find any ulterior motives for ending the tenancy.

The landlord provided full unredacted copies of the contract of purchase and sale between the parties as well as the addendums and the Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession. All the information regarding the sale of the property was fully disclosed to the tenant prior to the hearing. The tenant cannot argue that a lack of disclosure leads me to an assumption of a lack of good faith in ending the tenancy.

I find the purchaser's testimony to be compelling and forthright. I fully accept that she will occupy the rental unit as her personal residence within a reasonable time after taking possession of it. The purchaser provided a believable scenario where she and her partner preferred this living accommodation closer to her partner's work as a health care worker with better transportation options. It also has facilities not available in her current residence. I fully accept the testimony that she and her partner occupy this unit and will rent out their current residence to another health care worker at below market

rates. I also find it reasonable that the purchaser's mortgage is dependent on her occupying the unit as her personal residence.

Regarding the tenant's argument that the condition of the unit was not immediately suitable for the purchaser and that extensive renovations are required, I have very little evidence to support this argument. The tenant testified that the unit needed some work and the purchaser agreed with it, however no documentary evidence such as photos of the unit was supplied to indicate the unit requires the extensive renovations as alleged by the tenant before occupation by the purchaser.

The tenant's agent has also argued that prior verbal agreements between the previous landlord and herself somehow bound the landlord from selling the rental unit. Nothing in writing was supplied to support this. Without the terms of this agreement in writing, the tenant cannot rely on it as a means to stop the sale from proceeding.

Lastly, the tenant has pointed to the effective date of the notice to end tenancy being a month sooner than the date provided on the buyer's notice for vacant possession signed by the purchaser. As the seller of the property, the landlord is only obliged to provide as much notice as is required under section 49, which is two months. If the landlord provides the full two months' notice, the landlord is entitled to end the tenancy as early as two months later, under the legislation. This would potentially leave the seller without rent for the month between the effective date (June 30th) and the date the purchaser takes possession (July 31st) however that is the seller's prerogative to do so. Effectively, the tenant has had much more than 2 months, as the notice to end tenancy was disputed and the tenancy didn't end on either of those dates.

For the reasons above, I find the purchaser intends, in good faith to occupy the rental unit. I uphold the landlord's notice to end tenancy.

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the landlord's notice to end tenancy and I find it complies with the form and content provision as set out in section 52 of the Act. The landlord is granted an Order of Possession. As the effective date stated on the notice to end tenancy has

passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

As this tenancy is ending, the tenant's application seeking to dispute the landlord's 3 notices to end tenancy are dismissed without leave to reapply. Despite section 55(4) which allows the director to grant an order requiring payment of unpaid rent, I decline to make this order as the merits of the unpaid rent application was not heard. The landlord is at liberty to seek an order for unpaid rent by filing an application for dispute resolution.

The tenant was not successful in her applications and the tenant's filing fees will not be recovered.

The landlord was successful in her application and the \$100.00 filing fee will be recovered. In accordance with the offsetting provisions of section 72, the landlord may retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary order.

Conclusion

The landlord is granted an Order of Possession effective 2 days after service upon the tenant.

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 04, 2023

Residential Tenancy Branch