



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, OPL, FFL

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a Two-month Notice to End Tenancy for Landlord Use (*i.e.* for the landlords to occupy the unit), issued on or about 31 May 2023 [the 'Notice'].
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords also applied to the RTB for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. An Order of Possession pursuant to the Notice.
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the *in camera* hearing on 19 September 2023, along with an advocate. The tenants also appeared along with their own advocate.

Note that I refer to the parties in this dispute in the plural form, even though a party may be an individual. I do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Issue to be Decided

Did the landlords issue the Notice in good faith?

Background and Evidence

The landlords told me the following about why they issued the Notice:

- they recently retired from their occupation overseas (supported by a copy of a letter from their former employer);
- they wish to now live in their rental unit in Canada to be close to their sister and her family;
- this is their only residence available to them in Canada; and
- they will not rent this unit out to someone else after the tenants vacate.

In preparation for their move, the landlords told me the following:

- they shipped their personal belongings to the city where the rental unit is [the 'City'] (supported by a copy of a shipping receipt);
- they bought a one-way airplane ticket to the City (supported by a copy of that ticket);
- they initially intended to buy a ticket for an earlier flight, but did not do so when they learned that the tenants disputed the Notice; and
- they have obtained an estimate of cleaning the unit after the tenants vacate.

The tenants told me the following in support of their position that the landlords issued the Notice in bad faith:

- the landlords own other residential property in Canada where they could reside [the 'Other Residence']; and
- the landlords previously attempted to illegally increase the tenants' rent by \$50.00 *per* month.

In response, the landlords clarified that the Other Address is, in fact, an address that the landlords have used for receipt of mail on their behalf in Canada pending their relocation there. That is to say, they reiterated that they do not own other residential property in Canada.

Analysis

The tenants argued that the landlords bear the burden to demonstrate that they have an honest intention to occupy the unit (*per Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827 and *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165), and I agree. It is worthwhile clarifying that this burden is on a balance of probabilities.

So, have the landlords proved that they probably intend to move into the unit, and that this intention is probably honest?

The landlords told me that they intend to move into their rental unit because they have retired and want to now live in Canada, close to their sister and her family. They told me of the preparations they have made to follow through with this plan. They corroborated some of these statements with documents.

Both parties argued about whether this rental unit were the only residence that the landlords owned in Canada. I am satisfied that it is, in part having heard the landlords' explanation for the other address that they used in order to receive mail (when they couldn't use the address of the rental unit). Also, whether the landlords had somewhere else to live in Canada is not, in itself, proof that they have a dishonest intention in ending the tenancy of another property of theirs where they have chosen to live.

The only other point that the tenants raised to undermine the landlords' proof of their intention was that they had previously attempted to raise the tenants' rent, which the tenants said was illegal. There was no evidence as to when this attempt occurred in relation to when the Notice was issued; and there was no argument as to why this would indicate that the Notice was issued in bad faith.

In sum, I'm satisfied (based on the landlords' statements) that the landlords probably intend to move into the unit, and are probably honest in this intention. And the tenants did not provide any compelling evidence to suggest that the landlords were acting dishonestly.

Accordingly, I dismiss the tenants' application, and grant the landlords' application. I direct that the tenants include an extra \$100.00 in their final rent payment to the landlords in compensation for the filing fee.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 27 September 2023

Residential Tenancy Branch