



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (T) CNL
 (L) OPL, FFL

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to cancel a Two Month Notice to End Tenancy for Landlord's child's use of the rental unit issued June 21, 2023.

This hearing also dealt with the Landlord's cross-application for an Order of Possession based upon the same Two Month Notice to End Tenancy, and a request for reimbursement of the application filing fee.

The parties each confirmed receipt of the other's party's Dispute Resolution Proceeding Package and evidence prior to the hearing.

Issues to be Decided

Should the Landlord's Two Month Notice to End Tenancy be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to reimbursement from the Tenant of the application filing fee?

Background and Evidence

I have reviewed the evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided that established that this tenancy commenced March 9, 2018, on a month-to-month basis. The monthly rent is currently \$750.00, and the Tenant had provided the Landlord a security deposit in the amount of \$250.00.

On June 21, 2023, the Landlord issued a Two Month Notice to End Tenancy for Landlord's child's use of the rental unit. The effective date of the Notice was August 31, 2023. The Notice was served to the Tenant by registered mail on June 21, 2023. The Landlord provided the Canada Post tracking number to confirm this service. A copy of the Notice was submitted in evidence.

The Tenant timely filed this application for dispute resolution on June 29, 2023, within the 15 calendar days provided to tenant(s) to submit an application for dispute resolution of a Two Month Notice.

The Notice that is the subject of this hearing is the fourth the Landlord has issued since May 1, 2022, each of which has been the subject of a dispute resolution hearing.

1. Two Month Notice issued May 1, 2022 – the Landlord had issued a Two Month Notice to the Tenant on or about May 1, 2022. The Tenant contested the Notice, but neither party submitted a copy for the arbitration hearing. The Arbitrator held in a Decision that although the Tenant should have provided a copy of the Notice for purposes of the hearing as the Tenant was the applicant, the Landlord had the burden of proof. The Notice was cancelled on the grounds that the Landlord had failed to provide a copy into evidence.
2. Two Month Notice issued September 27, 2022 – within a week of the forementioned Decision, the Landlord again issued a Two Month Notice to the Tenant on September 27, 2022. The Two Month Notice provided that the Landlord's child would occupy the rental unit. The effective date of the Notice was November 30, 2022. During the hearing, evidence was adduced that the Landlord's son would move into the unit with his girlfriend and his pet dog. Evidence further established that, in addition to the subject rental unit in the basement of the home there is an adjacent two-bedroom suite that was also tenanted. No Notice to End Tenancy had been issued for that unit. The Landlord's daughter testified that the son would move into the basement suite with his girlfriend and his dog, as the main floor unit was already home to the Landlords' parents and three adult daughters. The Landlord's son's girlfriend was not living in the house but it was intended that she would when the son moved into the rental unit.

The Tenant testified that the subject rental unit was too small to accommodate two adults and their dog. The Tenant also testified that he had been informed it was the Landlord's daughter, not the son, who would be moving into the rental unit. The Tenant stated that the Landlord regularly inquired when he would be moving out, as she had led him to believe she could obtain a higher monthly rent from new tenants than the current \$750.00 per month she received from the Tenant. Documentary evidence established that the Landlord's family from overseas were coming to live in the rental unit. Finally, the Tenant noted that the main level of the home had four bedrooms and together with the two-bedroom

basement suite was adequate to accommodate the Landlord's family without displacing him.

The Arbitrator determined in a Decision that the Landlord's documentary evidence (a "Letter of Description") provided that one of her children would be moving into the rental unit, together with references to family from overseas visiting, suggested that these visiting family members would be using the rental unit, and these individuals did not meet the definition of "close family member" under section 49 of the Act. Therefore, the Two Month Notice was cancelled.

3. Two Month Notice issued July 2, 2023 – thereafter, the Landlord issued another Two Month Notice on July 2, 2023. The Tenant did not apply for dispute resolution of this Notice. However, on the Landlord's application for an Order of Possession, it was cancelled by the Arbitrator in a Decision, as the effective date of the Notice was January 5, 2023, approximately 7 months earlier than the date of issuance. The Arbitrator determined that the dates on the Notice were confusing and as the proper completion of the Notice was the Landlord's responsibility, the Notice was cancelled and the tenancy continued.

In this case, the Landlord's submissions were that the Landlord (the mother) resides in the main floor of the home with her husband, their children's grandparents, and one adult sister (daughter). The Landlord states that the son moved into the house in December 2022. He had previously resided in a rental unit with a roommate, but when the roommate moved out, he could not find an alternate rental in his price range and with a pet dog, rentals were even more difficult to find. It was submitted that the main part of the home is very crowded. The son's girlfriend stops by periodically. In an effort to alleviate the crowding in the home, the third Notice was issued to the Tenant. The Landlord's submits that the son will live in the rental unit and will provide help to his grandparents who live in the main area of the home. The Landlord states that the Notice has "nothing to do with re-renting" the unit, and the Landlord is aware of the compensation due a tenant in the event the Landlord fails to comply with the purpose of the Notice. The Landlord's advocate states that the 12-month compensation is an amount the Landlord could not afford, thereby suggesting the Landlord issued the Notice in good faith. The Landlord submitted photographs of the bedrooms in the home that the Landlord occupies.

The Landlord's submissions during the hearing established that the Tenant's unit is a one-bedroom with a kitchen and one bathroom. The other rental unit in the basement is a two-bedroom suite. The monthly rental rate on the other unit is \$1,300.00 and it is also rented on a month-to-month basis.

The Tenant's advocate stated that the Tenant has been residing in the unit for approximately 13 years. The Tenant submitted in evidence a note from his treating physician attesting to the Tenant's chronic medical, mental health and cognitive issues which has resulted in the Tenant's general confusion with dates and times, and that he

suffers from mobility issues. The Tenant's submission is the Landlord, not the father, two grandparents and two adult daughters of the Landlord reside in the main level of the home. The Tenant stated that he has been in the main part of the home occupied by the Landlord, that there are four bedrooms, and that he is "friends" with the grandfather. The Tenant's advocate notes that the Landlord "keeps changing their story" each time the Landlord issues a Notice to end the tenancy for Landlord's child's use of the rental unit.

The Landlord's advocate responded that it has simply taken the Landlord three attempts to "get the paperwork correct" and the number of attempts is not an indication the Landlord lacks good faith. The Landlord's advocate stresses the crowded nature of the Landlord's home with grandparents and children residing in the Landlord's home, and the need for the rental unit to alleviate this condition.

Analysis

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act states that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that Tenant has applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenant disputes that the Notice is being issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

In this case, the Landlord has made repeated efforts to end this tenancy which is more than a decade old. On each successive attempt, when contested by the Tenant, the Landlord's story does change as to the occupancy of the rental unit. Thus, initially, the Landlord's position was that a child (a son or a daughter) would be living in the unit and/or other visiting family members would use the unit. At a later hearing, the Landlord's position was that the son, his girlfriend, and their dog would be occupying the rental unit. When it was noted at the prior hearing that the subject unit could not adequately accommodate two adults and a dog, while the adjoining two-bedroom basement suite would be a better fit, in this hearing it is now attested that only the Landlord's son will occupy the unit, with his dog. As the Landlord's evidence at the hearing was that the son's girlfriend stops by periodically since the son moved into the main area of the home, there is no basis to suggest that this will not continue if the son relocates to the subject basement one-bedroom unit. This again raises the issue of the suitability of the rental unit for two adults which was noted in the prior hearing. Similarly, the son's dog is currently with him, and no evidence was adduced that the dog cannot remain in the main part of the home and must relocate to the downstairs unit.

Additionally, there was no evidence provided as to why the son, who currently lives in the main part of the home, cannot provide help to his co-habiting grandparents and requires the basement suite to do so. Finally, the inconsistent submissions as to which of the son's siblings is residing in the main part of the home, which has four bedrooms, undermines the Landlord's position that her home is over-crowded. The Landlord's and son's affidavits each reference only "daughters" or "sisters," respectively, living in the main part of the home together with the grandparents. There is no reference to the age of the daughter(s)/sister(s) although one photograph submitted by the Landlord of a bedroom in the main home shows decor appropriate for a younger child. The son's affidavit submitted in evidence states that his occupation of the rental unit would be convenient; the Landlord stating that the son having the rental unit would be harmonious for the family. The Landlord did not otherwise provide evidence of "over-crowding" beyond those statements. The photographs establish that the rooms are well-furnished, and sufficiently spacious to accommodate a desk and chair in some of the bedrooms. I find the Landlord's position presented in this proceeding regarding the purpose for issuing the Two Month Notice is simply a modified rationale of prior positions taken by the Landlord in an effort to countenance objections noted and raised in those prior Decisions.

Based upon the evidence, I find on a balance of probabilities, the Landlord has not met her burden with sufficient evidence that the Two Month Notice to End Tenancy issued June 21, 2023, was for the purpose stated in the Notice.

For the above reasons, the Tenant's application for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under section 49 of the Act is granted.

Is the Landlord entitled to recover from the Tenant the filing fee for this application?

I find the Landlord is not the successful party in this dispute resolution proceeding and therefore is not entitled to recover from the Tenant the filing fee for the application.

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is granted and the Notice issued June 21, 2023, is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Landlord's application is dismissed in its entirety, without leave to reapply.

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: November 06, 2023

Residential Tenancy Branch