



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Two Month Notice to End Tenancy For Landlord's Use of Property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and was accompanied by an assistant. The named landlord attended with another person identified as a co-landlord. The landlord was assisted by an interpreter, who was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the interpreter's skill and ability. The co-landlord and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties have provided copious amounts of evidence, which the parties agree should be considered. Therefore, all evidence provided has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property dated July 27, 2023 was issued in accordance with the *Residential Tenancy Act* and in good faith?
- has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically maintaining the property?

Background and Evidence

The co-landlord testified that the landlords purchased the rental unit in 2020 and the tenancy had commenced on September 1, 2013 on a month-to-month basis and the tenant still resides in the rental unit. Rent in the amount of \$850.00 was payable on the 1st day of each month, which was increased during the tenancy and is now \$879.00 per month, and there are no rental arrears. The landlords have received a security deposit in the amount of \$350.00, which the tenant paid on September 1, 2013 and no pet damage deposit was collected. The rental unit is a suite in a 4-plex, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

The co-landlord further testified that on July 27, 2023 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property in person. A copy has been provided for this hearing and it is dated July 27, 2023 and contains an effective date of vacancy of September 30, 2023. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse.

The landlord and the co-landlord are business partners, not related. The landlord named in this dispute will occupy the rental unit. He currently lives in a 3 bedroom house with his in-laws who are elderly and ill. His father-in-law had a heart attack and his mother-in-law also needs in-home care. The landlord's daughter goes to school and needs more space, as well as the landlord's son. The landlord wants to move into the rental unit, which has 1 bedroom. The landlord has no place to sleep now, and the rental unit is not far from the landlord's current residence.

All 4 suites in the rental building are owned by the landlord and the co-landlord, and none are occupied by their families. The unit above the tenant's unit has 3 bedrooms and is occupied. The landlords obtained an order of possession the day before this hearing for another 3 bedroom suite, which is being appealed, and the unit below is occupied by someone who is going through a crisis. That tenant has mental issues and no family; the co-landlord has been trying to help her. She would not be able to find another place, and would have to go to hospital if she had to move out.

The landlord has tried to hold off on issuing the Notice to end the tenancy, but his circumstances have changed, and this rental unit is most logical for him to move into. If

the landlord were to re-rent the tenant's rental unit, the landlords won't be able to pay the mortgage.

The tenant testified that there have been a lot of issues in the past and the landlord has not acted in good faith. Shortly after the landlords purchased the rental property in 2020, the co-landlord told the tenant that she was losing a lot of money and if she could evict the tenant, she would.

The parties have never gotten along well. The landlord brought a guy into the rental unit to take photographs, but the tenant does not know why and stopped them. Other properties in the area rent for more, and the landlord wants to raise the rent.

Maintenance requests have not been done by the landlord; no one answers the phone and the tenant ends up doing things at his own cost. A copy of a letter from a neighbour has been provided for this hearing dated October 15, 2023 which states that the landlord told the neighbour, "It is just a rental property." A lot of things need to be done, none or very little has been done by the landlord. The tenant has mentioned things often and receives no reply from the landlords. This has been going on since the beginning when the landlord and another person arrived with cameras. Every time the tenant asks for repairs, it takes longer.

Gutters need cleaning, and the landlord tried to do it with the tenant's ladder and hose. However the nozzle broke and the landlord told the tenant to buy a new one and took the tenant's ladder. The ladder was eventually returned to the tenant, however the gutters will cause a slip hazard and soon it will be ice. The tenant notified the landlord about the gutters a year and a half ago.

SUBMISSIONS OF THE LANDLORD:

The landlords have always accommodated the tenant's requests. When the landlords purchased the property in December, 2020 the landlords asked all tenants if anything needed to be done and each tenant was provided with a phone number for the landlords. In March, 2022 the tenant reported a heating issue which was resolved the same day costing the landlords \$477.00. While the landlord was out of the country, the tenant contacted the landlord's plumber for an emergency repair, which the tenant subtracted from the rent, around \$300.00, which the landlords accepted. Each time an issue was reported, it was dealt with the same day. The landlords have tried to fix the gutters. The tenant's advocate threatened to call police, interfering with repairs and wants advance notice for outside maintenance work which is shared by 4 tenants.

SUBMISSIONS OF THE TENANT'S ASSISTANT:

The tenant has been in arguments about maintenance with the co-landlord. When electrical issues were being inspected and when the co-landlord was informed about the inspection, she sent a text message to the tenant saying that any photographs would be illegal. The same text message was sent to the tenant living in the upper unit from this tenant. Multiple issues have not been responded to by the landlord. The co-landlord said, "Don't count on me," about repairing a stove, telling the tenant to call service people. To say that if the landlord were to re-rent the rental unit, the landlords won't be able to pay the mortgage, makes no sense; the landlords will not have the \$879.00 rental income.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration.

I have reviewed the Notice provided by the landlord, and I find that it is in the approved form, but does not contain a signature of the landlord. The tenant has not provided a copy so I cannot be certain that the copy provided to the tenant was signed.

The co-landlord testified that all maintenance requests have been dealt with in a timely manner, which is disputed by the tenant.

The co-landlord also testified that the landlord named in this dispute will occupy the rental unit. However, I find that to be difficult to believe given that to do so, he will no longer live with his spouse or children, and there is no evidence that the landlord has separated from his spouse.

I also question the landlord's intention with respect to attending at the rental unit to take photographs.

The co-landlord testified that if the landlord were to re-rent the tenant's rental unit, the landlords won't be able to pay the mortgage. I agree with the tenant that that makes no sense.

I also consider the undisputed testimony of the tenant that the landlord told the tenant on more than 1 occasion that if the landlord could, the landlord would evict the tenant. I find this to be a very convenient way of doing so. I also consider the undisputed testimony of the tenant that many times requests for repairs result in no answer from the landlords, and the statement from the landlord that the tenant is costing the landlord too much money.

In the circumstances, I am not satisfied that the landlord has demonstrated good faith intent, and I cancel the Notice.

The tenant has also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement. A landlord is required to provide and maintain residential property in a state of repair and decoration that makes it suitable for occupation by a tenant. I order the landlord to comply with the *Act* by making repairs and doing maintenance to the rental property within a timely manner.

A landlord is also required to provide to the tenant a phone number for emergency situations, and I order the landlords to provide that to the tenant and ensure that the phone is answered.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant may reduce rent for a future month by that amount, or may serve the order to the landlord and file it in the Provincial Court of British Columbia, Small Claims division and enforce it as an order of that Court.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated July 27, 2023 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by maintaining the rental property in accordance with the law in a timely manner as required, and by providing the tenant with a phone number for emergency repairs, and that phone will be answered by a landlord.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that

the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

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 11, 2023

Residential Tenancy Branch