



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with three separate tenant Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- Cancellation of the Two Month Notice (the Two Month Notice) to End Tenancy for Landlord's Use of Property,
- Authorization to recover the filing fees for this application from the Landlords under section 72 of the Act.

The hearing dealt with the Landlords' Application for Dispute Resolution under the Act for:

- An order of possession,
- Authorization to recover the filing fee for this application from the tenant under section 72 of the Act.

Tenants CB, CT, SP and Advocate JJ attended the hearing.

Landlord MS, SS and Witness MS attended the hearing for the Landlord.

Service of Notices of Dispute Resolution Proceeding (Proceeding Packages) and Evidence

As all parties confirmed service of the Proceeding Packages and documentary evidence, I find all parties were served with the required materials in accordance with the Act.

Issue(s) to be Decided

Do the Two Month Notices end the tenancy? Are the Landlords entitled to an order of possession?

Are the Tenants entitled to recover the filing fee?

Are the Landlords entitled to recover the filing fee?

Background and Evidence

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

Evidence was provided that the three separate rental units are in a duplex house (the House) that has two upper and two lower units.

The parties agree with the following tenancy details:

- Tenant CB occupies an upper unit (Unit A), with the tenancy start date of May 1, 2014.
- Tenant CT occupies an upper unit (Unit B) with the tenancy start date of September 1, 2015.
- Tenant SP occupies a lower unit (Unit C) with the tenancy start date of April 1, 2009.
- Lower unit (Unit D) is occupied by other tenants (BA and family).

On June 26, 2023, the Landlords served three separate Two Month Notices to Tenants CB, CT and SP. The Two Month Notices are dated and signed, with an effective date of August 31, 2023.

- The Two Month Notice issued to Tenant CB states that the rental unit will be occupied by the Landlord or the Landlord's spouse.
- The Two Month Notice issued to Tenant CT states that the rental unit will be occupied by the child of the Landlord or the Landlord's spouse.
- The Two Month Notice issued to Tenant SP states that the rental unit will be occupied by the child of the Landlord or the Landlord's spouse.

Landlord MS testified that they purchased the House in 2016, specifically as a holding property with a long-term plan for generational living. MS stated that currently all family members reside together in their family home. MS stated that their children are now young adults who are ready for independent living. It was a family decision for all family members to occupy the House.

MS testified that they plan to occupy Unit A, along with their spouse and youngest son.

MS testified that their son (MS2) and their partner plan to occupy Unit B. The Landlords filed letters from MS2 and their partner as part of their documentary evidence. MS2 testified that they plan to occupy the rental unit, to support their personal and professional goals.

MS stated that Unit C will be occupied by their youngest son (LS), who is currently enrolled in schooling in Arizona. LS is enrolled in a two year program with the end date of April 2024. MS testified that LS is to return home for few weeks for winter break and will finish their final term in April 2024. The Landlords filed a letter from LS as part of their documentary evidence.

MS testified that their family home is listed for sale as of June 23, 2023. The Landlords filed the listing as part of their documentary evidence. The Landlords also filed communication between them and their insurance agent dated June 26, 2023, showing they advised the insurance company of their plan to move.

Advocate JJ stated that all 3 Tenants dispute that the Two Month Notices were issued in good faith, and they doubt the Landlords will occupy the rental units for residential purposes.

CB testified that during a conversation with MS on July 2, 2023, MS stated that the rental unit is worth higher rental income. CB stated that the conversation was about money and increased rent to match the rental market rate. CB filed text message communication as part of their documentary evidence.

MS testified that they are committed to their plan to occupy the rental unit. MS referred to text message communication in which they shared the same plan with Tenant CB. The Landlords filed the text message communication as part of their documentary evidence. MS stated that the evidence filed by Tenant CB does not show their reply to CB.

CT testified that the Landlord previously used the address of Unit B when they registered their son for baseball in the area. CT stated that the Landlord asked her to lie about this should they be questioned.

CT stated that they spoke with tenant BA from Unit D, as they had received a Two Month Notice to End Tenancy for Landlord's Use of Property on June 26, 2023. CT stated that BA and their family negotiated a continued tenancy and the Landlord

cancelled the notice to end tenancy. CT stated that BA advised them of their plan to stay with an agreement to pay increased rent for Unit D.

MS stated that they issued to BA a Two Month Notice to End Tenancy for Landlord's Use of Property. MS stated that their eldest son (JS) planned to occupy Unit D. MS stated that they were approached by BA, who wanted to continue with the tenancy. MS stated that after a family discussion around this matter, JS decided to move in with their girlfriend. MS did not comment about any negotiation for increased rent. MS stated that BA feels bullied by the other tenants and asked them not to disclose further details.

Tenants CB, CT and SP stated that they communicated with BA who advised that it was easier to stay and pay increased rent for Unit D.

Analysis

Do the Two Month Notices end the tenancy? Are the Landlords 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. 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.

As the Tenant disputed this notice(s) on June 28, 2023, June 30, 2023, July 5, 2023 and as the Two Month Notices were served to the Tenants on June 26, 2023, I find that the Tenants have applied to dispute the Two Month Notices within the time frame allowed by section 49 of the Act. Therefore, per Rule of Procedure 6.6, the Landlords have the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenants dispute that the Notices are 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlords have failed to prove that they have sufficient cause to issue the Two Month Notices to the Tenants and obtain an end to this tenancy for the reasons stated below:

First of all, the Landlords advised of their plan to occupy the rental unit for generational living, where their family can remain together but also maintain independent living. With this plan, the Landlords issued the Two Month Notice to End Tenancy for Landlord's Use of Property to four separate tenants. As the Landlords negotiated a continued tenancy for occupants of Unit D, I question their plan and motive for the rental units. As the Landlord's placed considerable weight on their plan for generational living, I find their actions raise doubt as they changed plans for one of the four rental units.

Further, based on the testimony before me, I find it more likely than not that additional rent was secured for Unit D, which suggests an ulterior motive to end the tenancy. I apply this to all notices to end tenancy, as each notice was issued at the same time with the same plan for the House. The Landlord could have asked tenant BA from Unit D to provide witness testimony regarding their situation.

Residential Tenancy Policy Guideline 2A provides guidance to ending a tenancy for occupancy by landlord, purchaser or close family member. It states the onus is on the landlord to demonstrate that they plan to occupy the rental until for at least 6 months and that they have no dishonest motive. Further, other definitions to "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49.

Landlord MS testified that their son LS plans to occupy Unit C. LS is enrolled in a two year schooling program in Arizona, with the end date of April 2024. I find the Two Month Notice issued to Unit C was done so prematurely. With an effective date of August 31, 2023, LS is incapable of complying with the Two Month Notice by occupying the unit for residential purposes for the period of 6 months..

I accept that the Landlords' listed their current family home for sale and contacted their insurance agency for updated coverage resulting from the proposed move. I find these actions alone do not confirm that the Landlords will occupy the rental units for the stated purpose on the Two Month Notices. It is also premature to issue the Two Month Notices to all Tenants, not knowing when and if their own property will sell. Although MS2

testified they plan to occupy the rental unit, I find the Landlords have failed to substantiate their overall plan for the rental units or why they need possession of all units except for Unit D.

I find the Landlords have not proven that they have sufficient cause to issue the Two Month Notices to obtain an end to the three tenancies before me. I dismiss the Landlords' application for an order of possession, without leave to reapply.

The Tenants' applications are granted for cancellation of the Landlords' Two Month Notices under section 49 of the Act.

The Two Month Notices of June 26, 2023 are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Are the Tenants entitled to recover the filing fee?

As the Tenants were successful in their applications, I find that Tenant CB and CT are entitled to recover the \$100.00 filing fee paid for their applications under section 72 of the Act. Per section 72(2) of the Act, Tenant CB and CT may deduct this amount from one future month's rent in full satisfaction of the recovery of the cost of the filing fee. Such a deduction is not grounds for the Landlords to issue a notice to end tenancy for non-payment of rent, as a tenant is entitled to withhold rent when authorized by an arbitrator.

Are the Landlords entitled to cover the filing fee?

As the Landlords were not successful in this application, the Landlords' application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenants' applications are granted for cancellation of the Landlords' Two Month Notices under section 49 of the Act.

The Two Month Notices of June 26, 2023 are cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I authorize Tenant CB and CT to deduct \$100.00 each from one future month's rent in full satisfaction of the recovery of the cost of the filing fee.

The Landlords' application is dismissed, 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: December 5, 2023

Residential Tenancy Branch