



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Introduction

The tenants seek an order canceling a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") under the *Residential Tenancy Act* ("Act").

By way of cross-application the landlords seek an order of possession based on the Notice. Both the tenants and the landlords seek to recover the cost of the application fee.

It should be noted that both parties sought additional claims in their applications, however, those claims are either dismissed with leave to reapply, or, withdrawn (in the case of the landlords' claim for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent, which was withdrawn and cancelled).

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Are the tenants or the landlords entitled to recover the cost of their application fee?

Background and Evidence

In an application under the Act involving a tenant who disputes a notice to end the tenancy, the burden to prove the reason or ground for issuing that notice falls upon the landlord. The landlord must prove, on a balance of probabilities, the reason for issuing the notice to end the tenancy. While I have reviewed and considered all the evidence put forth by the parties, I will only refer to that which is relevant to this decision.

The tenancy began in 2020. The rental unit is a basement suite in a home. The two tenants and their child reside in the basement suite, and the landlords reside in the main part of the house.

On August 15, 2023, the landlords served the Notice in-person upon the tenants. A copy of the Notice was in evidence. Page two of the Notice indicates that the landlords want to end the tenancy because their adult child, a close family member, intends in good faith to occupy the rental unit.

The landlords' agent, who is their son, testified that he has long intended to eventually move into the basement suite, and he explained that he intends to move into the rental unit with his dog.

The tenants dispute that the landlords intend to have their son move into and occupy the rental unit in good faith. The tenants testified that the landlords tried to illegally increase the rent, and the relationship between the parties has not, at least since the beginning of this year, been particularly healthy. It is noted that the landlords have withdrawn the notice to end tenancy for unpaid rent because, as explained by the landlords' agent M.M., they have since become knowledgeable about the *proper* method for increasing rent.

Analysis

The landlords have issued the Notice under section 49(3) of the Act, which permits a "landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

In this dispute, the tenants submit that they do not believe that the landlords are intending in good faith to have their son occupy the rental unit.

“Good faith” is a legal term that means a party is acting honestly and without intention to defraud or avoid their obligations under the law or agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827), the Supreme Court of British Columbia ruled that a claim of good faith requires honesty of intention and absence of ulterior motives. This means that a landlord must honestly intend to use the rental unit for the stated purpose on the notice to end tenancy. If a tenant raises the issue of an ulterior motive or purpose for ending the tenancy, the burden is on the landlord to prove that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant accuses the landlord of not acting in good faith, the tenant must provide evidence to support their claim.

Here, while the tenants argued that the evidence supports a finding that the Notice was issued in bad faith, they simply did not provide any explanation for *how* or *why* the Notice may have been issued in bad faith. Certainly, it is not lost on me that the parties have had a disagreement regarding rent and whether rent increases were following the Act. But these are, I find, separate issues from the undisputed fact that the landlords’ son intends to move into the basement suite with his dog. The tenants did not, with respect, provide any evidence to support an argument that the landlords do not intend their son to move into the rental unit. Nor did the tenants cross-examine the landlords’ son as to his intentions.

In summary, I do not find that the tenants have provided sufficient evidence to prove that the landlords acted in bad faith by issuing the Notice. There is no evidence to suggest that the Notice was issued because of previous or existing disputes about the rent. For this reason, it is my finding that the landlords have proven on a balance of probabilities the reason for issuing the Notice and that they did so in good faith.

Having reviewed the Notice it is my finding that it complies with the form and content requirements of section 52 of the Act.

For these reasons, the tenants' application for an order cancelling the Notice is dismissed without leave to reapply and the landlords are granted an order of possession. A copy of the order of possession is issued with this Decision to the landlords, who must serve a copy of the order upon the tenants.

Having taken into careful consideration the submissions of the parties regarding when the tenancy ought to end, it is my conclusion that the tenancy shall end on March 31, 2024. I acknowledge that the landlords' son wishes to move into and occupy the rental unit, but I am equally mindful that the tenants have a child in school, and I am not prepared to put the tenants in a position whereby they must pick up and move right in the middle of school. For this reason, I have determined that the tenancy ought to end on the last date of the 2024 school break (for Surrey schools).

The landlords are entitled to recover the cost of their application fee in the amount of \$100 and may retain this amount from the tenants' security deposit *after* the end of the tenancy.

Conclusion

The tenants' application is dismissed, and the landlords' application is granted.

The landlords are granted an order of possession effective March 31, 2024.

Dated: December 2, 2023

Residential Tenancy Branch