



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN TEAM REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and 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 was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on August 16, 2020 and reverted to a month-to-month tenancy after August 31, 2021, and the tenant still resides in the rental unit. Rent in the amount of \$3,000.00 was payable on the 1st day of each month, which has been increased over time and is now \$3,214.60 per month, effective January 1, 2024. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,500.00 which is

still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment at a university.

The landlord's agent further testified that on December 11, 2023 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) by registered mail. A copy of the Notice has been provided for this hearing and it is dated December 11, 2023 and contains an effective date of vacancy of February 29, 2024. 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 father or mother of the landlord or landlord's spouse.

The landlord's father will be moving in, who currently resides out of the Country. A copy of the person's flight plan has been provided for this hearing. The landlord's agent testified that he arrives on March 1, 2024 and the landlord's agent told the tenant that no rent will be payable for February. The landlord is aware of the consequences if the landlord does not act in good faith.

The tenant testified that during the entire tenancy the landlord has made it clear that the tenant pays less than market rent. The landlord has also been trying to sell since March, 2023 and there have been weekly viewings and videos taken for the last year. The tenant believes it is a financial burden on the landlord.

The landlord also resides in the same Country as his father. For the landlord's father to move to a university in British Columbia does not seem likely. The ticket was purchased 11 days after the tenant filed this dispute. It sounds more like a vacation for the landlord's father.

All listings for the sale of the property stopped when the landlord issued the Notice.

The Notice was not issued in good faith, but just another avenue to make money.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord wanted to sell last year, and recently got married. The landlord's father wants to move to Canada and has no other place to live. The landlord did not explain to the landlord's agent why the landlord's father would move to Canada while the landlord lives in the other Country.

SUBMISSIONS OF THE TENANT:

None.

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*, which can include the reason(s) for issuing it. Further, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice, with no ulterior motive.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Good faith intent is challenged by the tenant.

There is no question that the landlord has attempted to sell the rental unit, and the cancellation of the MLS listing is dated May 7, 2023 with an approval on May 12, 2023.

I have also reviewed the airline Itinerary of the landlord's father. It was issued on December 26, 2023 and contains no return flight. The Notice to end the tenancy was issued on December 11, 2023, 15 days prior to the purchase of the air travel ticket, and is deemed to have been served to the tenant 5 days after sending it by registered mail, or December 16, 2023. The tenant filed this dispute on December 14, 2023, which is deemed to have been served on December 20, 2023, 5 days after sending it by registered mail.

If the landlord's father was truly going to reside in the rental unit, I question why the airline ticket wasn't purchased prior to issuing the Notice, and prior to the tenant filing this dispute. It seems just as likely that the landlord wasn't counting on the tenant filing the dispute and the airline ticket was purchased as a result of the dispute.

I also consider the undisputed testimony of the tenant that the landlord has made it clear to the tenant that the rental amount is less than market rent.

Considering the evidence, I am not satisfied that the landlord has demonstrated good faith, or that the landlord intends for his retired father to move into the rental unit at a university long-term. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

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, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order to the landlord and file it

for enforcement in the Provincial Court of British Columbia, Small Claims division 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 December 11, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby 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 be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: January 22, 2024

Residential Tenancy Branch