



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, PSF, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order permitting the tenants to change the locks to the rental unit;
- 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.

Both named tenants and the landlord attended the hearing, and the landlord was accompanied by a support person and an agent. The landlord's agent and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged. However, I could not open all of the massive amounts of evidence.

I explained to the parties at the commencement of the hearing that the Rules of Procedure specify that multiple applications contained in a single application must be related, and I found that the primary application is for an order cancelling a Two Month Notice to End Tenancy For Landlord's Use of Property. The hearing focused on that matter. All evidence of the parties that I could access and I found relevant to the Notice 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 September 21, 2023 was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent (DM) testified that this fixed-term tenancy began on July 1, 2019 and reverted to a month-to-month tenancy, according to the tenancy agreement, however it was renewed each year: June, 2020 to July, 2021, then July 1, 2021 to June 30, 2022 and then it reverted to a month-to-month tenancy. The tenants still reside in the rental unit. Rent in the amount of \$1,500.00 was originally payable on the 1st day of each month, which has been increased to \$1,522.00 in July, 2022 effective on November 1, 2022. There are no rental arrears. In 2019 the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a ground level basement suite and the landlord and spouse reside in the upper level.

The landlord's agent further testified that on September 22, 2023 the tenants were each individually served with a copy of a Two Month Notice to End Tenancy For Landlord's Use of Property by registered mail. Copies have been provided for this hearing, and they are dated September 21, 2023 and contain an effective date of vacancy of November 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 landlords have 3 grandchildren, ages 5, 8 and 12 who visit on a regular basis and need their space. The landlord's space is too small. The landlord also wants to put exercise equipment in the rental unit as recommended by a physician. The landlord wants the space for their 2 adult children and 3 grandkids when they visit.

The landlord is aware of the consequences of not acting in good faith, and it is not the landlord's intention to re-rent. The landlord is acting in good faith.

The tenant (DA) testified that the landlord is not telling the truth. The landlord has attempted to increase rent by 1/3 of the utilities or \$100.00 per month. The tenants

have provided a copy of a tenancy agreement for a new tenancy starting on July 1, 2022 until June 30, 2023 for \$1,500.00 per month, plus 1/3 of utilities (heat gas and electricity) or \$100.00 per month. The landlord wrote the tenants' names on it, and forced the tenants to take it, but the tenants didn't sign it; it only contains a signature of the landlord. The parties also talked about it during an inspection. The landlord also asked the tenants to increase rent in 2021, and the tenants accepted 1/3 of the utilities, but wanted copies of bills. The landlord instead cancelled that.

In 2022 the landlord again asked the tenants to increase rent. Videos will show how many times the landlord harassed the tenants, even after the previous hearing. The landlord's partner threatened to punch the tenant in the face when the parties were discussing a rent increase in February, 2022. When the rent increase was not successful, the landlord said that the tenants should move out and wanted to re-rent for at least \$1,900.00.

The landlord never answers any of the tenants' concerns, but accuses the tenants of lying. Mold in the bedroom damaged the tenants' mattress, and the landlord didn't pay for that.

The landlord told the tenant when moving in that the upper level of the home has 3 bedrooms, and told the tenants that they had 2 children from the beginning, both of whom the tenant has met.

The landlord told the tenant that the landlord uses his exercise equipment, and drops it very hard and the kids are louder since the tenants refused the rent increase.

It is not reasonable now to use another reason for ending the tenancy after not being successful in the previous hearing. The tenants have provided a copy of a Decision of the Residential Tenancy Branch dated July 13, 2023, wherein the landlord had applied for an order of possession after the issuance of a One Month Notice to End Tenancy For Cause. The Decision states that the parties agreed to settle the dispute, and that the landlord was to retain an independent person to act as property manager of the rental unit and provide the tenants with the name and contact information of the property manager, that all contact regarding tenancy issues shall take place between the property manager and the tenant, and not between the landlord and tenant. It also states that service of all notices shall be made by email between the tenant and the property manager. The Notice to end the tenancy was withdrawn.

At the previous hearing the landlord said that the tenants wouldn't allow entry, but evidence showed that the landlord tried to access the rental unit illegally in November,

2022. The landlord's partner tried to attack the tenant, and a third party was ordered. That person sent the tenants an email saying he was only a repairman and not there for any other reasons. He said he was not hired as a property manager. He only listened to what the landlord said, not any issues from the tenant and admitted that he only does what the landlord wants. He took photographs of the tenants' personal belongings, which the landlord also did previously, and never told the tenants why.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord relies on Residential Tenancy Policy Guideline 2A.

The Arbitrator at the previous hearing said that the third party did not have to be a licensed property manager. The landlord's grandkids are getting older and need their own place. They live about a 45 minute drive from the landlord's home.

SUBMISSIONS OF THE TENANT:

The landlord doesn't tell the truth about anything. The landlord only has 2 grandkids, and the landlord sent them to look in the rental unit. The tenants informed the landlord about a leak but the landlord hasn't provided the email about that, only another email. The Arbitrator gave the landlord 1 month to fix the leak, but it still leaks. The letter the landlord provided for the previous hearing was only about no leaks in the landlord's unit.

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. 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 without any 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 is challenged by the tenants.

Firstly, I have considered Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the

tenancy is raised, the onus is on the landlord to establish they are acting in good faith.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

I have attempted to review the tenants' evidentiary material, but an error message indicates that a lot of the uploads are not supported. I have reviewed the written evidence provided by the tenants and specifically an email from the landlord to the tenants dated August 4, 2022 advising that the tenants find a better place to live for their health, and to find a new home that's better for the tenants' life. It also suggests that the tenants may vacate without giving 30 days notice.

The evidence shows that the parties disagree about laundry, repairs, heat, dogs, noise, utilities and the amount of rent. However, the law states that rent can only be increased in accordance with the percentage amount and timing of increases.

I have also reviewed all of the landlord's evidence, including a letter from the landlord's daughter dated December 29, 2023 indicating that she is married with 3 children under the age of 12, and that the landlord has medical conditions and the writer will be visiting more frequently. The evidence also includes a note from the landlord dated December 29, 2023 stating that the "main reason for taking the suite back," is due to his health and that on advice by the landlord's doctor the landlord needs to exercise more regularly and would like to turn one of the rooms into an exercise room. It also states that the landlord will be spending more time with children and 3 grandchildren. Neither of the letters has been sworn or affirmed.

The landlord agreed during the last hearing that the landlord would obtain the services of a property manager. The tenant testified that the person is a repair person only who made it clear that he does what the landlord tells him to do. In reviewing the landlord's evidence, the person was only involved to inspect heat and electrical issues, and not for any other purpose. Further, I find that the notices to inspect were not given in accordance with the law. If given by email, Section 88 of the *Act* states that the notice is not deemed received until 3 days after sending it, and the landlord's agent must give no less than 24 hours notice following that.

Considering the testimony of the parties and the evidence that I was able to see, it is very clear that the landlord wants the tenancy to end, and has attempted to end it with a One Month Notice to End Tenancy For Cause, but settled the resulting dispute with the tenants. I find it very convenient to now decide that the landlord will use the rental unit because of his health and because his grandchildren are getting older. The landlord had growing grandchildren prior to issuing that Notice, and according to the tenant's evidence the landlord has been using his exercise equipment in his own unit. Considering the evidence, I am not even certain how many grandchildren the landlord has.

I also consider the tenant's testimony of the landlord attempting to increase rent, collect more money for utilities without providing the tenants with copies of the utility bills after the tenants agreed to pay 1/3, and failure to make repairs in a timely manner. The landlord gave the tenants an option to sign a new tenancy agreement after the tenants requested copies of the utility bills.

As mentioned above, the onus is on the landlord to establish that there is no ulterior motive for ending the tenancy, and I am not satisfied that the landlord has done that. I find that the ulterior motive is to simply get rid of the tenants. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

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

The balance of the tenants' application is dismissed with leave to reapply.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated September 21, 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 tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I

order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

The balance of the tenants' application is hereby dismissed with 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: January 21, 2024

Residential Tenancy Branch