



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNL, OLC, FFT**

Landlord: **OPL, FFL**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord's Use, pursuant to sections 49 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented by an agent, G.S. As both parties were present, service was confirmed. The parties each confirmed receipt of the application and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Preliminary Issue

Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy ("Notice") and the landlord's application to end the tenancy for landlord's

use were related and could be heard together. The tenant's other issue is not sufficiently related, and I exercise my discretion to dismiss it with leave to reapply.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The following facts are not disputed:

- The rental unit is located on acreage alongside 2 other structures.
- The tenant occupies the "rancher" – a 5-bedroom house.
- The landlord occupies the "main house" – a 6-bedroom house
- The third unit is tenanted with unrelated tenants and is referred to by the parties as the "carriage house". The parties disagree on how many bedrooms are in the carriage house.
- The tenancy began with a different landlord who was occupying the carriage house
- The original owner remained on the property as a tenant after selling the acreage but moved out in the summer of 2022.
- The current rent for the house is \$1,600.00 per month
- The landlord served the tenant 3 separate notices to end tenancy for landlord's use
- The first one was disputed, and the arbitrator cancelled it after determining it was defective in identifying the landlords as a family corporation
- The second one was served to the tenant on December 16, 2022, shortly after the first one was cancelled
- The landlord withdrew this notice to end tenancy after listing the property for sale

- The last notice to end tenancy is the subject of this hearing and was received by the tenant via registered mail on October 20, 2023
- The reason for ending the tenancy stated on the notice is because the father or mother of the landlord or the landlord's spouse will occupy it

The landlord's agent provided the following testimony. The landlord's mother and father live in the basement of their house. There is no kitchen in the basement which forces the landlord's parents to go up and down the stairs to prepare meals. They both suffer from bad health, such as knee problems, gout and osteoporosis. There is also an absence of natural daylight in the basement, affecting their well being.

When the landlord purchased the property, the original plan was for the parents to occupy the rancher, however they delayed that plan to allow the tenant to continue occupying it.

The landlord's agent argues that taking the carriage house was not ideal for the parents because the layout is challenging for his parents to navigate. The stairs from the garage entry to the main floor and an uphill, narrow walkway from the main entrance through the porch are challenging.

The tenant gave the following testimony. The stairs to access the rancher is no different from those to access the main house. She has been in the main house and testified that the landlord could easily build a ramp to assist the landlord's parents in accessing either the main house or the carriage house.

The tenant points to the photos of the carriage house and the rancher and notes that the carriage house is spacious, and has plenty of natural light in both the bedrooms. While the landlord states in his affidavit that the carriage home only has one bedroom, there are two bedrooms. To corroborate this, the tenant points to the rental listing for the carriage house dated June 15, 2022 stating that it has two bedrooms.

In the main house, where the landlord's parents occupy, there is a bar sink, a small fridge and a dishwasher, so the landlord's argument that it lacks a kitchen is not fully accurate.

The tenant argues that the landlords began trying to evict her when the issue of payment for the hydro came up. The parties disagreed on how the tenancy agreement divided up the hydro utilities and the tenant eventually agreed to pay the landlord in installments. Since then, the landlord has been trying to evict her.

The tenant testified that the landlord first tried to evict her so that the landlord's brother could move in. In a June, 2022 text, the landlord states, "*We had a chat with my brother yesterday as per his plans. They will be moving here in two months time hence as per our discussion on Friday, June 17th, we will be needing the place. Thank*"

When the original landlord moved out of the carriage home, the landlord immediately put up an ad to re-rent it. The tenant argues that this vacant unit would have been more than suitable for the landlord's parents to occupy. Instead, the landlords served the tenant with her first notice to end tenancy for landlord's use.

Analysis

The tenant filed her application to dispute the landlord's notice to end tenancy on November 5, 2023 and it is undisputed that she received it via registered mail on October 20th. The tenant has filed her dispute within the 15 days as required by section 49 of the Act.

The tenant disputes that the Notice is 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 landlord has failed to prove that they have shown good faith in issuing the Two Month Notice to the tenant and obtain an end to this tenancy.

Although the original notice to end tenancy was disputed and adjudicated upon by a different arbitrator, I look to it for background into the landlords' original motivation for ending the tenancy. Given the context of the text message sent to the tenant by the landlords in June of 2022, I believe the original intent for the rental unit was for the landlord's brother and family to occupy it. While the validity of the first notice is not before me and was cancelled due to deficiencies in form and content, I take notice of

the events that led up to it's issuance as context for determining the good faith of the landlord in issuing the notice to end tenancy that is before me.

Turning to policy guideline 2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member:

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)).

Policy Guideline 2A also states that *if there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.*

Given the evidence before me, I fully accept that the landlord's parents suffer from mobility issues and have difficulty walking. However, taking into consideration the landlord's evidence that the carriage house is unsuitable for the landlord's parents, I find insufficient evidence that this is the case. The affidavit of the landlord stating that the carriage house has only 1 bedroom is contradicted by the landlord's rental ad stating that it is two bedrooms. I do not accept that the carriage house is too small for the landlords' parents.

I have also viewed the photos of the "catwalk" leading to the carriage house and I am not convinced that it would be more difficult for the landlord's parents to walk along this level pathway than to ascend the stairs leading to the rancher. The landlord's agent testified that the landlord's parents do not drive, so I am not convinced that the garage entry to the main floor would ever be an issue, as stated by the landlord in his affidavit. As the gravel pathway directly in front of the carriage house is a suitably flat parking area, I would expect anybody driving the landlord's parents would park there and not in the lower garage. Consequently, I find that if the basement of the landlord's house was too difficult for the landlord's parents to navigate, the carriage house would have been a suitable alternative.

The tenant testified that she is aware that the rental unit she occupies is rented at far below market value. The tenant stated that the motivation for ending the tenancy was for financial gain, which I understand to mean that the landlords seek to re-rent the unit for a greater rent. On a balance of probabilities, I find it more likely than not that this is

the intent of the landlords. There still remains a second motivation, for the landlord's brother and family to occupy the unit, however I am more inclined to believe that the landlords would re-rent the unit if they were to obtain vacant possession of it.

I also find that the carriage house was a comparable vacant unit available for the landlord's parents to occupy but was rejected. This indicates a lack of good faith in ending the tenant's tenancy with the tenant.

I find the landlords have failed to establish good faith in ending this tenancy and for that reason the 2 Month Notice to End Tenancy for Landlord's Use issued on October 18, 2023 is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the Act.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The landlord's filing fee will not be recovered. In accordance with the offsetting provision of section 72, the tenant may reduce a single payment of rent due to the landlord by \$100.00.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use issued on October 18, 2023 is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the Act.

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 31, 2024

Residential Tenancy Branch