



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation for the landlord's failure to act in good faith or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property, and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude within the time scheduled and I adjourned the hearing for continuation. My Interim Decision was provided to the parties after the first scheduled date.

The tenant and the landlord attended the hearing on both scheduled dates, and the landlord was accompanied by the landlord's spouse and an Advocate. The landlord's Advocate and the tenant each gave affirmed testimony. The parties each called 1 witness, who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the landlord acted in good faith and used the rental unit for the purpose contained in the Two Month Notice to End Tenancy For Landlord's Use of Property, within a reasonable time after the effective date of the Notice, or do extenuating circumstances exist that prevented that?

Background and Evidence

The landlord's Advocate testified that this fixed-term tenancy began on May 1, 2021 and reverted to a month-to-month tenancy after April 30, 2022, and the tenant vacated the rental unit on August 17, 2023. Rent in the amount of \$2,500.00 was due on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit to the tenant in the amount of \$1,250.00, all of which has been returned to the tenant. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's Advocate also testified that the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) on July 11, 2023 by registered mail. A copy of the Notice has been provided for this hearing and it is dated June 30, 2023 and contains an effective date of vacancy of September 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 child of the landlord or landlord's spouse).

The tenant gave notice on July 28, 2023 to end the tenancy earlier, effective August 16, 2023, and was afforded compensation as required by law.

The landlord's son was arriving from another Country, who was supposed to arrive in early October, 2023. He has been living there on and off, and still lives there and his wife will be arriving. The landlord's Advocate does not know when. but believes the landlord's son started moving belongings in on August 29 and sent a text message to the building manager. On August 31 he started moving in furniture, although the landlord's son wasn't present for move-in, but his parents were helping him. He wanted to move in early October, 2023, which is why the Notice was effective September 30, 2023.

He lived in B.C. in 2021 till sometime in 2022 and went back to his Native country for about a year, and then returned.

A friend of the family lived in the rental unit for about a week, and the photograph of a package provided by the tenant is addressed to a family friend of the landlord's son. The photographs provided as evidence by the tenant show 2 cars; one is registered to the landlord and the other is an electric vehicle registered to the landlord's son. They are both owned by the father as primary, and the landlord's son is the secondary driver. The landlord's son changed the address to that of the rental unit on his driver's license during the first week of October, 2023, and on his insurance coverage, and copies of those have been provided for this hearing.

The landlord's witness is the landlord's son who testified that he graduated from school on June 26, 2023 and got married on July 24, 2023. The witness booked a flight to Canada on August 4 and arrived on September 13, 2023. The witness stayed at his parents' home, and went back and forth a few days at a time. Mostly on weekends the witness stays with his parents and during week days he stays in the apartment. The witness actually moved in almost at the end of September, but is not certain; he goes back and forth. The witness was not present for move-in; his parents got furniture for the witness.

The witness' friend was living there, but the witness doesn't remember when she moved in. The witness testified that the friend was there for roughly around 2 weeks, in September.

The tenant testified that the condominium apartment had 2 front doors, so separate residences, and when the tenant lived there, the tenant rented the entire unit.

The sticker on the landlord's son's driver's license has no date, and the landlord's son never moved in. The ICBC insurance document provided by the landlord shows the date of November 9, which is the same date the landlord received notice of this dispute. Both vehicles belong to the landlord, not the landlord's son. Referring to photographs of vehicles parked in the parkade provided by the landlord for this hearing, the tenant testified that for everyone in the building, the main entrance of the parkade has a number of EV stations for everyone's use, so to park an EV in that spot is not believable. The change of address on the driver's license is not proof that the son moved into the rental unit in October, 2023.

Evidence shows that the female resided there, and the landlord's son started appearing after the tenant served notice of this dispute on November 9, 2023. Packages sent to the landlord's son in evidence are taken in common areas of the complex, not in the mail. They were outside the mailboxes and all arrived after the date the tenant served the landlord.

After November 9, 2023 the landlord's son started showing up regularly, but only appeared once or twice in mid-October, and not again until after November 9. The parking stall only got used after the tenant served the landlord. Friends in the building have confirmed that as well, and told the tenant that they never saw the landlord's son until later in November, but a female had been seen almost daily since September in the lobby and garbage room. and suggested that the female lives in one unit and another female lives in the other unit, and they use different entrances.

The tenant's witness (RF) testified that he works as a property manager. The strata has a system for fob information, activity and a camera but the witness does not have access to it. The witness received a formal Summons, but it was issued to the witness rather than the strata corporation. The strata is governed by Council, and if a Summons had been received, the Council could provide a PDF.

SUBMISSIONS OF THE LANDLORD'S ADVOCATE:

The landlord's decision to purchase the rental unit was re-rooted in their traditions; parents prepare a marital home for their child and the landlord has only 1 son. He went to his home land and came back, but the rental unit continued as a rental. When the landlord's son graduated he got married and returned to Canada, and since he planned for that the landlord gave the Notice to end the tenancy for the rental unit to be his marital home. They are coddling parents, but it's common in their culture. Canada is welcoming, which is why they came here. The goal was for him to move in. There were delays about his wife coming due to immigration paperwork, but no malicious intent. They are ready to start a life here and want to live in the home happily without issues.

SUBMISSIONS OF THE TENANT:

This is Canada, and there is a process, such as good faith. It was imminent according to the landlord's Advocate that the tenant had to move out. There is no evidence to suggest that the landlord's son moved in, but a female did. Evidence from the landlord's son is that the friend moved into the rental unit in September, and he moved in after September, but doesn't know when. There is still no evidence that he lives there except that he said part time. When the rental unit was purchased, their realtor was trying to get the tenant to sign a new tenancy agreement, for the entire year until the tenant was served with the Notice to end the tenancy. The landlord's spouse was reaching out to the tenant by email to get together, and with conversations, indicating that we had to sign a new tenancy agreement and that due to the market it would have to be a new contract at a higher rate. Within 2 weeks, the tenant was served with the Notice. The landlord's evidence is contradictory, and there is no evidence that the landlord's son lives there.

Analysis

Where a tenant makes an application for monetary compensation for the landlord's failure to act in good faith and use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the onus is on the landlord to prove that good faith intent. If the landlord fails to comply with the *Residential Tenancy Act* commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration, the landlord must compensate the tenant the equivalent of 12 months rent payable under the tenancy agreement. The *Act*

also states that I may excuse the landlord from paying the compensation if I find that extenuating circumstances exist that prevented the landlord from accomplishing the stated purpose.

In this case, the effective date of vacancy contained in the Notice is September 30, 2023, and the reason for ending the tenancy is for the child of the landlord to occupy the rental unit.

I have reviewed all of the evidence, and what strikes me first is that if the landlord's son moved into the rental unit in September, 2023 he would remember when. However, his testimony continued to be that he goes back and forth between his parents' home and the rental unit. September and October were not that long ago.

I also note that the ICBC document is cut off at the bottom and no date is visible. I also note that the photograph of a Walmart package, which was provided by the tenant was sent to the female friend at the rental address appears to be dated November 11. The packages addressed to the landlord's son are dated November 13 and 19, and December 4. The letter regarding health insurance is addressed to the landlord's son at the address of the rental unit dated November 15, 2023. All of the evidence shows dates that are after the date the tenant served notice of this hearing.

I also consider the unopposed submission of the tenant that for a year prior to receiving the Notice to end the tenancy, since the landlord purchased the rental unit, the landlord's realtor and the landlord's spouse attempted to get the tenant to sign a new tenancy agreement at a higher rate of rent. That in itself gives rise to an ulterior motive.

I accept that the culture is to provide a home for a child, and there is nothing wrong with the landlord's son having guests who stay at the rental home, and there is nothing wrong with the landlord's son going back and forth from the rental unit to his parents' home. I accept that the rental home may have been purchased by the landlord for the landlord's son to eventually occupy it, however I am satisfied that the landlord has re-rented one unit into 2 rental units in the meantime, which is contrary to the law.

I find that the landlord has failed to establish that there was no ulterior motive, or that the landlord acted in good faith in ending the tenancy, and the tenant is entitled to compensation in the equivalent of 12 times the monthly rent of \$2,500.00, or \$30,000.00. 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 in the amount of \$30,100.00. The landlord must be served with the order, which may be filed in the

Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, 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 \$30,100.00.

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: March 06, 2024

Residential Tenancy Branch