



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNDC, MNR, OLC, PSF, RP, OPC, OPL

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking an order to cancel a *Two-Month Notice to End Tenancy for Landlord's Use* dated October 27, 2013 and effective December 31, 2013. The stated basis for the termination Notice is that the unit must be vacated as it will be occupied by the landlord's son. The tenant is also seeking monetary compensation in reimbursement for the cost of emergency repairs, an order to force the landlord to comply with the Act, an order to force the landlord to provide services and facilities required by law and an order that the landlord complete repairs.

The hearing was also to deal with a cross application by the landlord seeking an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use and monetary compensation in damages.

The landlord stated that, although they had indicated on the application that they were seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause, this was done in error as no such Notice was ever issued.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Issue(s)

Request for Adjournment

At the commencement of the hearing the tenant made a verbal request for an adjournment of the hearing. The tenant testified that they had been ill and did not have sufficient opportunity to submit all of the evidence upon which the claim was based. The tenant's application for dispute was filed on October 3, 2013.

Rule 6.1 of the Residential Tenancy rules of Procedure provides that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from **both the applicant and the respondent** is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.

Rule 6.2 provides that, **if the consent of the other party to rescheduling the dispute cannot be obtained**, and the applicant or respondent needs the hearing to be rescheduled to another date because they are unable to attend the dispute resolution proceeding due to circumstances beyond their control, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding.

This must be done by submitting to the Residential Tenancy Branch, at least three (3) business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and describing the specific circumstances that are beyond the party's control preventing them from attending the dispute resolution proceeding.

The landlord or tenant seeking the adjournment can also have an agent represent him or her to attend the dispute resolution proceeding in order to make a request to the arbitrator to reschedule the dispute resolution proceeding, and to describe the circumstances that are beyond the party's control preventing them from attending the dispute resolution proceeding.

In some circumstances proceedings can be adjourned **after the hearing has commenced**. However, the Rules of Procedure contain a mandatory requirement that the Arbitrator must look at:

- the oral or written submissions of the parties;

- consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- assess the possible prejudice to each party.

At the hearing, the tenant explained that they had additional evidence to support the case and to dispute the landlord's Notice.

I made the following findings:

- the tenant's request for an adjournment was not received at least 3 days prior to the hearing,
- the other party was not in agreement with an adjournment,
- a delay would prejudice the other party who is seeking to end the tenancy pursuant to the Notice,
- the tenant had over 2 months to submit the evidence upon which the tenant intended to rely.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party. Accordingly, the tenant's request for an adjournment was denied. The hearing then proceeded as scheduled.

Service of the Landlord's Evidence

The tenant confirmed that she received the landlord's application for dispute resolution and evidence, but stated that the evidence was received late, as it was not delivered to her "mailing address", which is apparently different from the dispute address.

The landlord testified that they served the tenant evidence by registered mail addressed to the tenant's residential address and provided proof that this mail

was sent on December 6, 2013. I find that Canada Post records show that although the mail was delivered, the tenant did not pick up the registered mail until December 16, 2013.

In regard to the Application for Dispute Resolution and Notice of Hearing, I find that section 89(1) of the Act states that an application for dispute resolution must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail **to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

(My emphasis)

In regard to evidence, I find that section 88 of the Act state that all documents, other than those referred to in section 89 *[special rules for certain documents]*, are to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) **by sending a copy by ordinary mail or registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service prescribed in the regulations.

(My emphasis)

I accept that the landlord followed section 89(1)(c) of the Act and section 88(c) of the Act, with respect to mailing the evidence. I find that the tenant did receive the Notice of Hearing, as well as the evidence.

Sever Unrelated Disputes

Landlord's Monetary Claim

In regard to the landlord's monetary claim, I find that the Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the landlord's monetary claim for damages under section 67 of the Act is a distinct matter separate from the other portion of the landlord's application that pertains to terminating the tenancy for landlord's use, pursuant to section 49 and 55 of the Act.

Accordingly, I find that the monetary portion of this application should be severed and this other matter must be dealt with separately through an application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply. However, a determination will be made on the remainder of the landlord's application in regard to the Notice to End the tenancy.

Sever Tenant's Monetary Claims

With respect to the tenant's monetary claim, I find that Residential Tenancy Rules of Procedure, Rule 2.3 applies to this situation as well. I find that the most pressing matter in the tenant's application is the request to cancel the Two Month Notice to End Tenancy for Landlord Use. Because the tenant's claim for damages was made under section 67 of the Act, I find that this part of the application is distinct and separate from the tenant's request that the Two Month Notice to End Tenancy for Landlord's Use issued pursuant to section 49 of the Act should be cancelled.

Accordingly, I find that the monetary portion of the tenant's application and the other requests in the tenant's application, must be severed. I find that the monetary claim must be dealt with separately through an application under section 67 of the Act.

Issue(s) to be Decided

Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances or should it be cancelled as requested by the tenant?

Background and Evidence

The tenancy began on August 16, 2013 and the current rent is \$650.00. A security deposit of \$325.00 was paid.

The tenant and the landlord discussed matters and incidents that occurred during the tenancy and most of this testimony was found not to be relevant. The tenant's position is that the landlord has a history of trying to terminate the tenancy by harassing the tenant. The tenant testified that the landlord has now issued a Two Month Notice to End Tenancy for Landlord's Use, but this is merely another ploy as an excuse to end the tenancy for another motive than that being put forth. The tenant pointed out that this shows bad faith on the part of the landlord in serving the Two Month Notice to End Tenancy for Landlord's Use.

The landlord testified that they intend to prepare the tenant's suite and the rest of the rooms in the building for the landlord's son to occupy as his principal residence. The landlord testified that they need the tenant's rental unit to be vacated for this use. The landlord testified that it has always been their intention to use the rental unit for this purpose.

The landlord stated that their son will be leaving home and getting married and needs to set up his own home.

The tenant questioned the landlord's stated intentions and pointed out that this landlord had made repeated attempts to convince the tenant to relinquish the tenancy. The tenant is alleging that this is because the tenant raised some issues about repairs and other concerns.

The tenant believes that the stated purpose for terminating this tenancy has been contrived and suspects that the true motive is a reprisal against the tenant, because of conflicts that had arisen in the tenancy. The tenant pointed out that there have been heated confrontations with the landlord.

The parties testified that the tenant was not charged any rent for the month of December 2013, as rent was waived to compensate the tenant the equivalent of one month rent, as required under section 51 of the Act when a Two Month Notice to End Tenancy for Landlord's Use has been served.

Analysis:

Section 49(5) provides that 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.* (my emphasis).

However the tenant has questioned the landlord's motive in issuing the Two-Month Notice to End Tenancy on the basis of bad faith.

The "good faith" requirement under the Act imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the reason for seeking to have the tenant vacate the residential premises. If the motive for the landlord in ending the tenancy is to retaliate against the tenant or try to avoid legal responsibilities as a landlord, then the intent of the landlord is not considered to be in "good faith" and dishonesty may be inferred.

In the case before me, I do not find sufficient evidence to indicate any bad faith on the part of the landlord, nor to suggest that the landlord's son does not truly intend to reside in the portion of the rental unit now occupied by the tenant.

The landlord provided believable testimony that the genuine reasons behind serving the Two Month Notice to End Tenancy for Landlord's Use is to enable the landlord's son to live on the property after he leaves home and in preparation of his upcoming marriage plans. I do not find significant verifiable reasons to reject the landlord's testimony.

Therefore, I find there are not sufficient grounds to cancel this Two Month Notice to End Tenancy for Landlord's Use and the tenant's request to cancel the Notice must be

dismissed. Accordingly, I find that the Two Month Notice to End Tenancy for Landlord's Use remains in force.

I hereby dismiss the tenant's application in its entirety, without leave to reapply.

I hereby grant the landlord an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use dated October 27, 2013 and effective December 31, 2013.

This order must be served on the tenant and may be enforced through an application to the B.C. Supreme Court, if necessary.

Section 50(1) of the Act states that, if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the **tenant may also end the tenancy earlier by**

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section **does not affect the tenant's right to also receive the equivalent of one month compensation under section 51** [*tenant's compensation: section 49 notice*]. (My emphasis)

I find that the tenant is at liberty to leave earlier than the effective date of the Notice by following the protocol outlined in section 50(1) of the Act and if she complies with this section and vacates prior to December 31, 2013, the landlord must compensate the tenant for the number of days left in the month after she vacates.

The remaining issues included in the tenant's and the landlord's applications are dismissed with leave to reapply.

Conclusion

The tenant is not successful in the application and the tenant's request to cancel the Two Month Notice to End Tenancy for Landlord's Use is dismissed. The landlord is successful in the cross application and is granted an Order of Possession.

The remainder of the tenant's and the landlord's applications are severed and 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: December 17, 2013

Residential Tenancy Branch

