Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 5, 2014 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlord CT ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the 2 Month Notice on November 5, 2014, by way of registered mail and on November 7, 2014, by way of posting to her rental unit door. The tenant confirmed receipt of the 2 Month Notice on November 7, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 2 Month Notice on November 7, 2014.

The tenant testified that she served the landlords with her Application for Dispute Resolution hearing package ("Application") by way of registered mail. The landlord confirmed receipt of the Application. Both parties could not recall the date of service. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

During the hearing, the landlord made an oral request for an order of possession against the tenant.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlord testified that this periodic tenancy began on September 15, 2013. Monthly rent in the amount of $650.00 is payable on the fifteenth day of each month. The landlords did not require a security deposit to be paid for this tenancy. However, both parties testified that one full month's rent of $650.00 was paid in advance, at the beginning of this tenancy. The tenant continues to reside in the rental unit. The rental unit is one of two cabins located on a three acre property, owned by the landlords.

A previous hearing at the Residential Tenancy Branch ("RTB") was held on October 31, 2014, before a different arbitrator, the file number of which appears on the front page of this decision ("previous hearing"). This decision was in respect of a 2 Month Notice, dated September 12, 2014. However, that notice was cancelled on technical grounds at the previous hearing on October 31, 2014. Both parties agreed that the application was dismissed because the landlord indicated more than one reason on the 2 Month Notice, for ending the tenancy. The decision further indicates that the landlord may issue a new 2 Month Notice in the future. No findings of fact were made and the application was dismissed on the preliminary issue above, not the merits of the case. The new 2 Month Notice of November 5, 2014, is the only notice before me at this hearing.

The landlords' 2 Month Notice, stating an effective move-out date of January 15, 2015, identified the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The landlord stated that he intends to occupy the rental unit with his wife, the other landlord named in this Application. The tenant disputes the 2 Month Notice on the basis that the landlords have not issued it in good faith.

The landlord testified that both landlords require the rental unit in order to continue and retain their employment with SB ("SB"), their employer. The landlord is a groundskeeper and maintenance worker and his wife is a gardener. Both landlords

have been performing their employment in two different cities “T” and “SSI,” where SB owns properties. The landlords currently live in T but used to live on SSI for many years. The landlords have plans to retire on SSI. They have been commuting regularly between the cities, which requires approximately 5.5 hours in travel time. Whereas previously the commute was made every 6 weeks, it is now approximately every 2 weeks in frequency. The landlords have worked for SB in SSI and T for many years.

In May 2014, SB’s head gardener in SSI died. The landlord provided a letter, dated October 2, 2014, from SB, stating that she required additional help at her property in SSI, due to this death. The landlord stated that SB required the landlords to take over the position of the deceased gardener in SSI. Although the landlords have work to be performed in T, the landlord has been training his replacement for the last 3 years, who is now ready to take over SB’s business in T and that person will need to occupy the staff house in T. The tenant testified that she understands that the landlords have to work and live in SSI.

The landlord testified that he requires the tenant`s rental unit urgently because his wife is currently providing personal care to SB and is required to stay at SB`s residence temporarily, because she has no other residence in SSI and the tenant is occupying the rental unit. In November 2014, SB, who is elderly, had an accident and broke her hip and pelvis and suffered a concussion, requiring hospitalization. The landlord provided medical documentation with his written evidence, to confirm these facts. The landlord’s wife is currently providing 24-hour care to SB at her 1 bedroom home in SSI. SB stays in a hospital bed in her living room, while the landlord’s wife occupies SB’s bedroom. The landlord is required to commute from T to SSI every 6-7 days in order to assist SB, his wife and perform his employment duties in SSI. The landlord stays in SB’s bedroom with his wife, when he visits. He indicated that there is no privacy at SB’s home. He stated that SB’s home is too small for three people and both landlords are forced to stay there because the tenant is occupying the rental unit. Although SB requires constant care, the landlord indicated that this would end in two to three weeks from this hearing date and a schedule could be organized where his wife could provide assistance at night, while other staff could be hired during the day.

The landlord provided a letter, dated December 5, 2014, from SB, stating that she is the landlords` employer in SSI, that she upgraded the landlords’ employment position from gardener to personal caregiver, that this was a full time position shared between both landlords and that the landlords were temporarily residing with her until they were able to gain access to the tenant`s rental unit.

The tenant stated that the landlords operate their own business in T, their business products are manufactured there and it is questionable that the landlords intend to run their business from SSI, rather than T. The landlord testified that this business was started in T, where both landlords have been living for some time, but it is based in SSI, where their markets, laboratories and printers are located. He noted that he will be moving his business operations to SSI.

The tenant testified that the landlords have another fully furnished cabin on the rental property ("other cabin"), which is the same size as her rental unit cabin, that they have been using as a residence for at least the last 2 years of her tenancy. She indicated that there is appropriate plumbing there, as well as a full kitchen. The tenant questions why the landlords cannot occupy this other cabin, rather than her rental unit. The landlord testified that while there are two cabins on his rental property, only the tenant's rental unit is a legal dwelling. The other cabin is a temporary dwelling where the landlords previously stayed when they visited SSI. This other cabin was converted from a backhoe shed to a studio, where pottery work is completed by the landlord's wife. The landlord had obtained a permit to have this studio built and was only using this cabin as a temporary dwelling, which he says is a common practice in SSI. However, the landlord testified that the tenant called a building and health inspector to report the landlords' other cabin as an illegal dwelling. The building inspector ordered the landlord to cut his water supply to this other cabin. The tenant denies calling the health inspector to report the illegal dwelling, but rather that she reported the lack of potable water as well as the quality of water problems at the rental unit. She noted that the health inspectors performed a series of tests on the water. The landlord testified that there are technical problems with the electrical, plumbing and septic systems that will not allow this other cabin to function as a dwelling, as it was designed for another water system. The landlord testified that because the other cabin is under the watchful eye of the building and health inspectors, who have classified it as an illegal dwelling since the tenant`s report, the landlord cannot legally use this other cabin as a dwelling now. He stated that there is no running water and no occupancy permit for this other cabin. Therefore, he requires the tenant`s rental unit as a primary residence for him and his wife.

The landlord testified that he does not own any other properties, besides the two cabins on the rental property. He stated that he would be forced to buy another piece of property just to live and work in SSI, if he and his wife were unable to re-occupy the tenant`s rental unit.

The tenant testified that she had insufficient and lack of potable water at her rental unit from July until mid-September 2014 and reported these problems to the landlords. She

also complained regarding the landlords` failure to provide 24-hour written notice to enter the rental property and had a number of issues with the landlord`s brother-in-law JC and another worker, BE. The tenant stated that the landlords are attempting to evict her with the 2 Month Notice, based on these complaints. She denied access to JC to enter the rental unit and was issued her first 2 Month Notice, dated September 12, 2014, the day after this denial. The landlord testified that the water problems are a secondary issue and that he made efforts to resolve this problem by sending in JC and BE, as well as having building and health inspectors attend the rental unit to test and fix the water issues. He noted that inspections have been done, permits are in place and the issues have been resolved. The tenant testified that she has not caused any water problems in the rental unit. She stated that since the end of September 2014, she has had an adequate water supply and there have not been any issues with the water system at the rental unit. She stated that water problems were unusual during her tenancy, as it occurred this past summer 2014 because of the dry summer weather. She indicated that she was able to resolve her differences with BE, regarding the water work performed by him.

The tenant further testified that she has not had any issues with the landlord since the previous hearing date on October 31, 2014. The landlord testified that he has not yet installed a storage system in the rental unit, which was required by the building inspector, in order to avoid causing any problems or loss of quiet enjoyment to the tenant.

The tenant, in her written evidence, proposed a settlement to move out of the rental unit on June 15, 2015 or earlier, if she was able. During the hearing, the tenant proposed April 15, 2015. The tenant indicated that it would be difficult to move at this time, given that she is currently busy in school, requires time to move her belongings, garden and greenhouse, and find a rental unit during the winter months.

Analysis

While I have turned my mind to the documentary evidence, including e-mails, letters and photographs, as well as the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlords’ use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on November 7, 2014, and filed her Application on November 19, 2014. Therefore, she is

within the time limit under the Act. The onus, therefore, shifts to the landlords to justify the basis of the 2 Month Notice.

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

> *"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*
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> *If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

The landlords state that they issued the 2 Month Notice in good faith, as they require the tenant`s rental unit to occupy as their own primary residence. The tenant disputes that the landlords issued the 2 Month Notice in good faith.

The tenant stated that the landlords` first 2 Month Notice from September 2014, was dismissed at a previous hearing. However, the previous hearing decision is clear that this dismissal was made on technical, rather than merit-based, grounds. The landlord indicated two reasons instead of one, on the notice.

The tenant stated that the landlords can occupy the other cabin on the rental property as a primary residence. I accept the landlord`s evidence that this property was deemed an illegal dwelling by building inspectors, that there is no running water in the unit, that the unit cannot legally be used as a residential home, and that this property was built for and is currently being used, as an art studio. The landlords do not currently own any other properties in SSI.

The tenant indicated that the landlords operate their own business in T and that it is questionable that they would operate this business from SSI. I accept the landlord`s evidence that this business can be run from SSI, where various suppliers are already in place.

The tenant indicated that she was being evicted because she complained about water problems and denied access to the rental unit. Both parties agreed that the water issues were resolved in late September 2014. The tenant stated that the first 2 Month Notice was issued one day after she denied access to the rental unit to the landlords` agent JC. However, this first notice is not before me, as it was dismissed on technical grounds at a previous hearing. With respect to the current 2 Month Notice from November 2014, I accept the landlord`s evidence that the water problems were a secondary issue, appropriately dealt with by the landlords` agents, and that they have resolved. I find that there have been no further water issues and no issues between the landlord, tenant or BE since the last hearing and before the current 2 Month Notice was issued.

I find that the landlords require the rental unit to occupy as a primary residence in order to live and work in SSI, which is a far commute from their current residence in T. The landlords have lived and worked for many years in SSI, intend to retire in SSI, and have kept their property in SSI while living in T. Although they have worked for SB in T, they have trained a replacement for the last 3 years, who will be taking over the business and living in the staff house, currently occupied by the landlord.

I find that the landlords provided sufficient documentary proof to support their testimony, that they are employed by SB and that she requires them to perform full time work in SSI, particularly given her recent injury. While SB`s November 2014 injury occurred after the 2 Month Notice was issued, the landlords provided documentary evidence from SB from October 2014 that the death of her previous gardener in May 2014 increased the workload and the need for the landlords to be present in SSI. The landlords have always maintained their work in SSI, even while living in T. Given the landlords` recent inability to use their other cabin as a residence, which they say is due to the tenant`s report, they have been required to stay with SB temporarily. The travel between T and SSI has become a hardship for the landlords, particularly given the more frequent trips to SSI and the long commuting distance.

Based on a balance of probabilities and the evidence of the parties, I find that the landlords intend to occupy the rental unit in good faith, as per section 49(3) of the *Act*. I find that the landlords have met their onus of proof.

Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the landlords' 2 Month Notice and I grant an order of possession to the landlords. The tenant must vacate the rental unit by no later than 1:00 p.m. on January 15, 2015, the effective date on the 2 Month Notice.

The parties should take note of the following section of the *Act*:

> **Tenant's compensation: section 49 notice**
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> **51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
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> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
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> (2) In addition to the amount payable under subsection (1), if
>
> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the tenant was unsuccessful in her Application, she is not entitled to recover the filing fee of $50.00 paid for this Application, from the landlords. The tenant must bear the cost of her own filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed.

The landlords` 2 Month Notice, dated November 5, 2014, is upheld. I grant an Order of Possession to the landlords effective by 1:00 p.m. on January 15, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant is not entitled to recover the filing fee from the landlords.

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 2, 2015

Residential Tenancy Branch