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 landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant lives in the basement of a home owned by his parents, one of whom was named as a respondent (Landlord PN) in his application. The other landlord (the landlord), the tenant's brother-in-law holds a Power of Attorney over the affairs of Landlord PN, and was named as a respondent in the tenant's application. The tenant's elderly parents moved to an assisted living facility on August 9, 2014,

At the hearing, legal counsel for the landlords made an oral request for the issuance of an Order of Possession in the event that the tenant's application to cancel the 2 Month Notice were dismissed.

Preliminary Matters – Service of Documents
The landlord who attended this hearing (the landlord) testified that he sent the 2 Month Notice to the tenant by registered mail on December 16, 2014. The tenant confirmed that he received this 2 Month Notice on December 24, 2014. In accordance with section 88 of the *Act*, I find that the tenant was deemed served with the 2 Month Notice by December 22, 2014, the fifth day after its registered mailing.

The tenant was uncertain as to when he sent the landlords copies of his dispute resolution hearing package by registered mail. The landlord submitted written evidence

to confirm that this package was sent by the tenant on January 2, 2015, and successfully delivered to the landlord on January 9, 2015. In accordance with sections 89 of the *Act*, I am satisfied that the landlords have been served with the tenant's dispute resolution hearing package.

The tenant confirmed that he had received and reviewed the landlords' first written evidence package, which the landlord testified he sent on January 10, 2015 by Canada Post's Expresspost service. I find that this evidence was deemed served to the tenant on January 15, 2015, in accordance with section 88 and 90 of the *Act*.

The landlord entered into written evidence a copy of the Canada Post Online Tracking record for the tenant's written evidence sent by the tenant on January 7, 2015. This record confirmed that the tenant's written evidence package was received by the landlord on January 13, 2015. In accordance with sections 88 and 90 of the *Act*, this written evidence was deemed served on January 12, 2015, the fifth day after its mailing and nine days before this hearing.

After receiving the tenant's written evidence package, the landlord sent a second written evidence package to the tenant in response to the tenant's written evidence. He sent this second package by Canada Post's Expresspost service on January 16, 2015, five days before this hearing. The landlord testified that Canada Post's Online Tracking Records showed that this second written evidence package was successfully delivered to the tenant on January 19, 2015, two days before this hearing. At the hearing, the tenant confirmed that he had received the second written evidence package but had not looked at it in any detail because it was not sent by registered mail. He said that he did not believe that it could form part of the consideration of issues at this hearing because it was not sent by registered mail and came in so late.

Registered mail, defined under the *Act* as any Canada Post service requiring a signature for delivery, is only required for the service of copies of the applicant's dispute resolution hearing package (including notice of a dispute resolution hearing). Section 88 of the *Act* allows a party to send written evidence by regular mail. In this case, there is undisputed sworn testimony supported by written evidence that the tenant did receive the landlord's second written evidence package in advance of this hearing. This second written evidence package was served very late, and after the time period established in the Residential Tenancy Branch's (the RTB's) Rules of Procedure for serving such evidence. Those same Rules of Procedure also require an applicant for dispute resolution to serve written evidence that existed at the time of the application to the respondent along with the original dispute resolution hearing package or as soon as possible after that date. Receiving the tenant's written evidence on January 13, 2015,

the landlords would have had little opportunity to comply with the notice provisions established under the Rules of Procedure in time for this hearing.

In considering whether to admit this very late written evidence, I have taken into account whether any of this second package of written evidence submitted by the landlords has any real bearing on the matters properly before me. With the exception of Canada Post Online Tracking Records, I find very little of the landlords' second written evidence package addresses the central issue of this application, the landlords' 2 Month Notice. In fact, the landlord noted this very point in his following statement in this second written evidence package where he observed that "all or most of the evidence submitted by the tenant is not relevant to his dispute of the '2 Month Notice to End Tenancy for Landlord's Use of Property' the Landlord delivered on Dec 16, 2014." In making my decision with respect to the admissibility of this disputed written evidence package, I find little benefit in considering the landlords' second written evidence package. It has very limited relevance to the issues properly before me. I find that this second evidence package acts as a rebuttal to the tenant's written evidence package, most of which has little bearing on the 2 Month Notice. For these reasons, and with the exception of the Canada Post Online Tracking Records included in the landlord's second written evidence (which would be available online at any rate), I have disregarded the landlord's second written evidence package.

Preliminary Issue – Consideration of Tenant's Request for an Adjournment

After the details of service of documents had been established and after the landlord had given his sworn testimony, the tenant testified that he had nothing to question or say about the landlords' 2 Month Notice. The tenant gave some sworn testimony regarding the issues that he believed should be taken into account with respect to his application. Without any prior notice, he then asked for an adjournment of the proceedings to enable him to see a new lawyer. He testified that he had not had enough time to properly prepare his case and had only recently been diagnosed with Post Traumatic Stress Syndrome. He requested an adjournment of two or three weeks.

As there had been no prior notice from the tenant as to this request for an adjournment, I asked the landlord and his counsel for their position with respect to the tenant's request. The landlord testified that the landlords and the purchaser of the property would be greatly prejudiced by an adjournment. He said that the property is scheduled to change hands at the end of February 2015, and the tenant has known that the property was being sold for many months. He also noted that considerable work needs to be performed on the property before the purchasers can move into the premises. The landlords' legal counsel also objected to the timing of this very late request for an

adjournment, noting that there had been no previous indication from the tenant that he would be requesting an adjournment.

Analysis- Consideration of Tenant's Request for an Adjournment

Rule 6 of the Residential Tenancy Branch Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. As the tenant had made no prior request for an adjournment until most of the evidence in this matter had been heard, Rule 6.3 applies:

> ***6.3 Adjournment after the dispute resolution proceeding commences***
> *At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

> *(a) the oral or written submissions of the parties;*
>
> *(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*
>
> *c) 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;*
>
> *(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
>
> *(e) the possible prejudice to each party…*

In this case, the tenant clearly stated that he had no intention of reaching any mutual agreement to resolve this matter that would require him to vacate the premises.

I note that the tenant received the 2 Month Notice on December 24, 2014, and submitted his application for dispute resolution on December 30, 2014. The hearing date and time were scheduled on December 31, 2014, three weeks in advance of this

hearing. During that period, the tenant had ample opportunity to submit a written request for an adjournment, but did not do so. As noted above, the tenant made no request for an adjournment when this hearing began. He delayed asking for an adjournment until after the landlord had presented sworn testimony and reviewed the landlords' written evidence. The tenant did not request an adjournment until after I advised the parties that the issue properly before me was limited to the landlord's 2 Month Notice. This occurred after I noted that I had no jurisdiction over a whole host of disputes between him and his family, particularly the landlord acting under a Power of Attorney for his father, the other landlord.

At the hearing, the tenant testified that he had learned within the past week that he was suffering from Post Traumatic Stress Syndrome. He also said that he needed to remain in the premises to protect his rights to compensation with respect to a Worksafe BC claim, which also required an Environmental Assessment to determine causality with respect to his health. Although the tenant maintained at the hearing that these were very recently developing matters, which needed to be taken into account in granting his request for an adjournment, I note that all of the issues he raised at the hearing were ones also referred to in his January 6, 2015 written submission to the RTB. Had any of these issues required an adjournment of the hearing, the tenant could have submitted a written request for an adjournment at that time.

After considering the prejudice that would result to the landlords and the purchaser of the property who was intending to move into the home after he gains possession, I advised the parties of my finding that the tenant had not met the criteria established for granting an adjournment and proceeded with this hearing.

Issues(s) 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 tenant?

Background and Evidence

The same parties were involved in a November 18, 2014 dispute resolution hearing of an application from the tenant to cancel a 1 Month Notice to End Tenancy for End of Employment (the 1 Month Notice). In the November 18, 2014 decision of the arbitrator who considered that application (referred to in the title page of this decision above), the arbitrator made the following statement in conclusively determining that a tenancy relationship under the *Act* exists for this tenancy.

Based on the written submissions of both parties received prior to the hearing it was unclear whether or not I had jurisdiction on the relationship between the parties. As such, I questioned both parties in regard to the tenancy arrangement.

The parties agreed on specific terms such as the value of rent and when it was due. The tenant submitted that while he lived in his parent's home he was in a separate suite that had a bathroom and kitchen facilities.

Based on the testimony of both parties I find the parties are in a tenancy relationship that is governed by the Residential Tenancy Act (Act) and I accept jurisdiction on the matters in this Application for Dispute Resolution…

At this hearing, I noted that the legal principle of *res judicata* prevents me from reconsidering findings reached by the previous arbitrator who determined that this tenancy fell within the jurisdiction of the *Act.* On that occasion, the previous arbitrator concluded that this tenancy remained in effect because the landlord had not demonstrated that there was an intention to provide or rent the rental unit to a new caretaker, manager or superintendent. At that time, the previous arbitrator reported in his decision that the "landlord submits that he had issued the notice because the family intends to sell the property and there is no section under the Notice that allowed him to end the tenancy because the tenant was an adult dependent of the family."

In the previous decision, the arbitrator also noted that there was agreement between the parties that the tenant had been living in the rental unit prior to August 10, 2014 as part of an agreement whereby the tenant was caring for his elderly parents who lived upstairs. As of the date when his parents relocated to the assisted living facility, the tenant received notice from the landlord that he was "laid off" from his services. At that hearing, the tenant maintained that "he was also responsible for the upkeep and care of the residential property."

At this hearing, the parties once more agreed that monthly rent of $1,000.00 was supposed to have been paid by the tenant on the 27th of each month, commencing in August 2014. Although it is of no bearing to the matters before me, the landlord testified that the tenant has not made any of these payments since his parents vacated the upstairs portion of this home.

On November 22, 2014, Landlord PM signed and accepted a conditional offer to purchase and sale for this property. On December 10, 2014, all conditions on the original office to purchase were removed. On December 15, 2014, the landlord received a letter from the new purchaser forwarded to him by the realtor involved that

the purchaser requested vacant possession of the home as he wanted to live in the entire home with his family. The landlord entered into written evidence copies of all of the above documents.

On December 16, 2014, the landlord issued the 2 Month Notice to the tenant advising him that the new purchaser had requested vacant possession of the entire property because he and his family intended to live there.

The landlord gave undisputed sworn testimony that he had spoken with the new purchaser to confirm that he intended to reside in the entire home with his family once renovations are completed. The landlord said that since the property has not been refurbished in many years, considerable work will need to be undertaken by the new purchasers. At the hearing, the landlord gave undisputed sworn testimony that the new purchaser is planning to move into the property by March 31, 2015. At the hearing, the landlord testified that the new purchaser was available if necessary to give oral testimony to confirm his intentions of living in the rental unit if that were under dispute. As the tenant had no questions regarding the landlord's sworn testimony and did not question the landlord's evidence that the new purchaser intends to move into the home with his family, there was no need to include the new purchaser in this hearing.

The landlord indicated that if a mutual agreement to end this tenancy could be arranged at this hearing, the landlord would take measures to allow the tenant to remain in the rental unit March 7, 2015. The tenant rejected this offer, noting that he had no intention of vacating the rental unit, stating that he would hire a new lawyer and seek review and judicial review of any decision issued requiring him to vacate the property.

The tenant's written evidence and sworn oral testimony addressed a range of issues involving the relationship between the landlord, the tenant and the rest of the tenant's family. As was apparently the case with the previous hearing in November 2014, the tenant maintained that the landlord's handling of the tenant's parent's business affairs needed to form part of the matter before me. In his written evidence, the tenant asked that the terms of a contract between the tenant and his parents be taken into account. The tenant also provided sworn testimony and written evidence regarding a range of issues including an injury the tenant maintained occurred while working as an employee for this parents, which has led to his submission of a Worksafe BC claim, as well as an alleged health care issue arising from his employment and residence on his parent's property. The tenant also included references to disputes regarding life insurance, bank accounts, estate planning and changes to his parents' wills, none of which have any bearing on the matter before me. The tenant also supplied copies of letters from an

extended family member who attested to the tenant's care of his parents and the family home, and his injury while providing some of this care.

Other than his claim that the present landlord is "in breach of a work agreement" providing the tenant with room and board, there is barely a reference in any of the tenant's written evidence to the 2 Month Notice, the matter before me. At the hearing, the tenant's sworn testimony was chiefly directed at the service of documents and his request for an adjournment. After I denied his request for an adjournment, the tenant advised that he would be seeking judicial review of this denial.

Analysis

Section 49(5) of the *Act* reads in part as follows:

> *(5) A landlord may end a tenancy in respect of a rental unit if*
>
> > *(a) the landlord enters into an agreement in good faith to sell the rental unit,*
> >
> > *(b) all the conditions on which the sale depends have been satisfied, and*
> >
> > *(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
> >
> > > *(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;…*

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reason for seeking an end to this tenancy on February 28, 2015:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

RTB Policy Guideline 2 describes the good faith requirement outlined in section 49(5) of the *Act* as "an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage." This Guideline also describes this good faith requirement in the following terms:

> *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 the Tenancy. This might be documented through:…*
>
> > *an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy;…*

This Guideline also attaches a burden of proof on the landlord to demonstrate that the Notice to End Tenancy was issued in good faith if a landlord's intentions or that of the purchaser are called into question by a tenant.

Based on the evidence provided by both parties, it seems clear that there are many issues unrelated to the landlords' 2 Month Notice that remain in dispute between the parties and which may unfold over time. In considering the tenant's application, I find as did the previous arbitrator that the tenant supplied a great deal of evidence unrelated to this dispute but related to other disputes and incidents between the parties and other family members. My jurisdiction is limited to the *Act*, the tenant's application to cancel the 2 Month Notice, and the landlord's oral request for an Order of Possession.

Although the tenant has certainly raised many unrelated issues regarding his relationship with the landlord and the landlord's handling of his parents' affairs, the tenant has not raised any questions as to whether this property has actually been sold, nor any questions as to whether the new purchaser intends to move into the property. In his sworn testimony and in his written evidence, I find that the tenant did not address or even question the validity of the reason cited in the landlords' 2 Month Notice. While I have no doubt that the tenant sincerely believes that the entire history of his interaction with his family members should be taken into account in deciding whether or not he should be allowed to remain in this rental unit, the reality is that the property has been sold and the purchaser plans to live there.

The tenant has not asked any meaningful questions or dispute as to the reasons cited in the 2 Month Notice or the purchaser's written request to obtain vacant possession of the entire property for his family. I find no evidence to suggest that the landlords were acting in anything but good faith when they issued the 2 Month Notice. In fact, there is written evidence, including in the form of the previous arbitrator's decision, that the tenant has been well aware of the intention to sell this property for a long time. While this may be difficult for the tenant to accept, the property has been sold and the new purchaser is planning to live there.

Under these circumstances, I find on a balance of probabilities that the landlords have demonstrated that they have met the requirements of section 49(5) of the *Act* and Policy

Guideline 2 in issuing the 2 Month Notice. I dismiss the tenant's application to cancel the 2 Month Notice. As the tenant has been unsuccessful in his application, I find that he is not entitled to recover his filing fee from the landlords.

Section 55(1) of the *Act* reads as follows:

> ***55*** *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
>
> > *(a) the landlord makes an oral request for an order of possession, and*
> >
> > *(b) the director dismisses the tenant's application or upholds the landlord's notice.*

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. In accordance with section 55(1) of the *Act*, I issue the landlord an Order of Possession as the tenant's application has been dismissed.

Conclusion

I dismiss the tenant's application without leave to reapply.

The landlords are provided with a formal copy of an Order of Possession effective February 28, 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.

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 26, 2015

Residential Tenancy Branch