Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNQ FF O

Introduction

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

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 12, 2017 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application, pursuant to section 72; and
- unspecified other orders.

This hearing was joined with an application that had been adjourned on February 3, 2017. In that hearing the tenant applied for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlords right to enter the rental unit pursuant to section 70;

The landlords and the tenant both attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented at the hearing by counsel, SB and ND.

The tenant confirmed receipt of the landlords 2 Month Notice issued in person on January 13, 2017, while counsel for the landlords confirmed receipt of the tenant's Application for Dispute Resolution ("Tenant's Application") and evidentiary package by way of Registered Mail on approximately February 1, 2017.

As the hearing was concluding, the tenant informed the arbitrator, counsel for the landlords and the landlords that he would be recording the proceedings. The tenant was warned against this and repeatedly directed to Rules 6.11 and 6.12 of the *Residential Tenancy Branch Rules of Procedure.* These Rules state:

Rule 6.11 Recording prohibited: Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

Despite these warnings, the tenant maintained that it was his right to record the proceedings. The tenant cited the Supreme Court of Canada ("SCC") case of *R v. Goldman 976.* No case with this citation could be found; however, *Goldman v. R., [1980] 1 S.C.R. 976* was a matter ruled on by the SCC in 1979. After reviewing this decision, I am unable to see the correlation between the tenant's position that he has a right to record the proceedings and the decision rendered in *Goldman*. Specifically, *Goldman* was a criminal appeal related to private communications within the meaning of s. 178.1 of the *Criminal* Code. Furthermore, this appeal was dismissed by the SCC.

Although the hearing continued to its conclusion, the tenant was cautioned that his proposed actions in recording the remainder of the hearing were contrary to Rules 6.11 and 6.12 of the Rules of Procedure.

Issue(s) to be Decided

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

Is the tenant entitled to a return of the Filing Fee?

Can the tenant set limits on the landlords' right to enter the rental unit?

Should the landlords be required to comply with the *Act?*

Should the tenant be granted an order allowing access to or from the rental unit?

Background and Evidence

Testimony was provided during the course of the hearing from landlord DW that the landlords, a family corporation, purchased the apartment building in August 2013. The tenancy with tenant PA was in place when the property was bought. No tenancy agreement was signed by the parties. Rent of $700.00 was paid monthly and a security deposit of $425.00 continues to be held by the landlords. DW stated that the landlords received this money in trust from the previous owner of the building.

On January 12, 2017 the tenant was served with a 2 Month Notice based on *the landlords being a family corporation and a close family member of that person [the landlord] intends in good faith to occupy the rental unit*.

On February 3, 2017 the *Residential Tenancy Branch* issued an interim decision concerning the landlords' application for an Order of Possession for use, as well as the tenant's application for orders pursuant to sections 62, 70 and 72 of the *Act*. This hearing was adjourned **by consent of both parties**, and was joined with the present matter. **No findings were reached regarding the February 3, 2017 hearing.**

The tenant alleged that this 2 Month Notice was issued in bad faith. In support of his argument the tenant cited a previous settlement agreement that the parties had reached on December 20, 2016 during arbitration before the *Residential Tenancy Branch*. The tenant stated that it was his understanding that the December 20, 2016 settlement which included the cancelation of a previous 2 Month Notice dated October 29, 2016 concluded any issues that may exist concerning the tenancy. The tenant made repeated statements during the course of the hearing that he did not understand why this matter was being heard as it was his position that the landlord had previously failed in his issuance of a 2 Month Notice and that the settlement the parties reached constituted full and final arbitration of that matter.

The settlement in question documented an agreement concerning the monthly rental rate, arears due, provisions concerning how the landlords may serve a Monetary Order and Order of Possession, and information concerning additional rent increases.

Furthermore, the tenant maintained that another rental unit in the property existed and if it was the true intention of the landlords' son to occupy a rental unit, he would be well served by unit #203 which was currently unoccupied.

Counsel for the landlords stated that it was the true intentions of the landlords' son to occupy the rental unit presently held by the tenant and that the settlement agreement reached on December 20, 2016 which dealt with a 2 Month Notice issued on October 29, 2016, was silent on any further proceedings being brought against the tenant.

Analysis – 2 Month Notice

Subsection 49(4) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

A large body of evidence was presented as part of the landlords' evidentiary package that the landlords' son, DW was a close family member of a person who owned voting shares in the corporation. Section 49(1)(a) of the *Act* defines "close family member" as *the individual's parent, spouse or child.* DW, being the landlords' son therefore qualifies as a "close family member" under the *Act*.

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

> *A claim of good faith requires honesty of intention with no ulterior motive…*
> …
> *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.*
>
> *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.*

During the course of the hearing, the tenant sought to establish that the landlords were acting in bad faith. He cited the landlords' previous issuance in October 2016 of a 2 Month and 10 Day Notice, and the fact that unit #203 was presently unoccupied.

While I appreciate the tenant's argument that a 2 Month and 10 Day Notice had previously been issued, these matters were settled during the December 20, 2016 arbitration. This settlement agreement contained no fixed or implied terms preventing the landlords from further exercising their rights with regard to the property. Nothing was recorded in the settlement demonstrating that the landlords agreed to any restrictions concerning the tenancy other than those contained within the settlement agreement. Furthermore, the interim decision reached on February 3, 2017 states "after extensive discussions it was clarified with both parties that the tenant does not seek any specific orders, but instead seek a documented definition of an occupant, sub-tenant and what a sublet is. *The tenant seeks only findings being made regarding the tenant's loss of quiet enjoyment, the landlord's right to enter the rental unit and the tenant's right for access for guests.* The hearing was adjourned by consent of both parties to be joined with the tenant's file for related issues…on March 1, 2017 at 11am.*"* Again, no fixed or implied terms are present in the interim decision preventing the landlord from pursuing further arbitration.

When questioned as to why the landlords' son could not occupy unit #203 which was identified as vacant by the tenant, counsel for the landlords noted that this was a 2 bedroom suite and therefore unnecessary for a single person living on their own.

I find that based on the testimony provided by counsel for the landlord, as well as the landlords' evidentiary package, that the landlords have acted in good faith and do intend for their son to occupy the rental unit. In addition, the previous 2 Month Notice dated October 29, 2016 no longer merits consideration as it was cancelled as a result of the settlement agreement reached between the parties on December 20, 2016 and was never the subject of adjudication on the merits by the arbitrator. For the purposes of this hearing, I find that the 2 Month Notice issued on January 13, 2017 to be valid and the landlords to be entitled to an Order of Possession on March 31, 2017.

Analysis – Limits on the landlord's right to enter & limiting access to the rental unit

Written evidence was produced by both sides as part of the hearing packages documenting an incident between the landlords' son, DW and the tenant on January 9, 2017. This matter was investigated by the police department who reported "there is an ongoing tenant-landlord dispute between the landlords and the tenant with the Residential Tenancy Branch. Both parties advised to avoid direct contact with each other and to continue their dispute through the RTB…both parties were advised not to directly contact each other and were receptive…the landlord was advised to continue his landlord-tenant dispute though the RTB and his lawyer."

Both DW and the tenant have produced written records of the incident. These accounts are relatively similar and paint a picture of conflict between the parties that arose from the presence of a person unknown to DW in the rental building. The landlords are ordered to comply with the sections 29 and 30 of the *Act*. These sections restrict the landlords` right to enter a rental unit unless they abide by the terms contained within section 29 of the *Act* which will be attached below the decision. Furthermore, pursuant to section 30(1)(b) of the *Act* the landlords must not unreasonably restrict access to the residential property by a person permitted on the residential property by that tenant. Should the landlords fail to comply with this order, the tenant may have grounds to file a Monetary Order.

I order both parties to direct all future communications through counsel for the landlords. The landlords are ordered not to enter the rental unit unless authorized under section 29 of the *Act* and not to unreasonably restrict access to the rental unit pursuant to section 30(1)(b).

Analysis - Should the landlords be required to comply with the *Act?*

No evidence was presented at the hearing or as part of the tenant`s evidentiary package concerning specifically how he would like the landlords to comply with the *Act*. During the course of the hearing the tenant presented some testimony concerning another resident of the building and inquiries were made by the tenant as to whether or not the landlords' actions towards those tenants fell within the parameters of the *Act.* No determination was made concerning this matter as it fell outside the scope of the present landlord-tenant relationship. The tenant's application for an order requiring the landlords to comply with the *Act* is dismissed.

Conclusion

The tenant's application to cancel a 2 Month Notice is dismissed and the landlords are granted an Order of Possession for March 31, 2017. The landlords are provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Supreme Court of British Columbia.

The landlords are ordered to communicate with the tenant solely through their counsel and must not enter the rental unit except as allowed under the provisions set out in section 29 of the *Act.*

I order the landlords not to unreasonably restrict access to the rental unit as stipulated in section 30(1)(b) of the *Act.*

Both parties must bear their own cost of the filing fee associated with this application.

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 8, 2017

Residential Tenancy Branch