Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, PSF, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking an Order for the Landlord to provide services or facilities required by law and to make repairs to the unit, site, or property, as well as recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, and the agent for the Landlord (the "Agent"), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that has been accepted for consideration in this hearing; however, I refer only to the relevant facts and issues in this decision. At the request of the Tenant, a copy of the decision will be e-mailed to her at the e-mail address provided in the Application. At the request of the Landlord, a copy of the decision and any Order of Possession issued will be e-mailed to him at the e-mail address provided in the hearing.

Preliminary Matters

Amendment

On December 12, 2017, an Amendment to an Application for Dispute Resolution (the "Amendment") was filed by the Tenant indicating that she had received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") which she wished to dispute. The Landlord confirmed receipt of the Amendment and the Application was therefore amended in accordance with the Act and the rules of Procedure.

Dismissal of Claims

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states, under rule 2.3, that claims made in an Application for Dispute Resolution must be related to each other and that Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Although the Tenant has applied for the resolution of several matters relating to the tenancy, it is my determination that the priority claim relates to the Two Month Notice and the continuation of this tenancy. I find that the Tenant's remaining claims for an Order for the Landlord to provide services or facilities required by law and to make repairs to the unit, site, or property are not sufficiently related to the grounds for ending this tenancy as set out in the Two Month Notice. Further to this, as the continuation of the tenancy is at issue, I find that it is necessary to first address the validity of the Two Month Notice prior to assessing any claims relating to future or continuing obligations of the parties under the *Act* or the tenancy agreement.

Based on the above, I exercise my discretion to dismiss the Tenant's claims seeking an Order for the Landlord to provide services or facilities required by law and to make repairs to the unit, site, or property. I grant the Tenant leave to re-apply for these matters.

Evidence

The Landlord and Agent testified that their documentary evidence was sent to the Tenant by registered mail on January 4, 2018, but the Tenant testified that she did not receive it until January 13, 2018, which is not within the timeline required by the Rules of Procedure.

The Landlord and Agent argued that according to section 90 of the *Act*, the Landlord's evidence should be deemed received by the Tenant on January 9, 2018, five days after it was sent by registered mail. The Landlord and Agent therefore argued that the evidence was received by the Tenant at least seven days prior to the hearing in accordance with the Rules of Procedure.

I note that the Tenant resides in a remote community and with the consent of both parties, I accessed the registered mail service provider's website and reviewed the registered mail tracking information. This information indicated that although the

registered mail was sent on January 4, 2018, the registered mail did not arrive in the Tenant's community until January 12, 2018. The tracking information also indicates that a notice card was left on the door of the Tenant's rental unit on the afternoon of January 12, 2018, and that the Tenant picked-up and signed for the registered mail on January 13, 2018.

I find that it would be unreasonable and a breach of natural justice to find that the Tenant was deemed served with the Landlord's evidence on a date prior to the day in which the registered mail was available for pick-up by the Tenant. Based on the foregoing, and despite section 90 of the *Act*, I find that the Tenant was served with the Landlord's evidence on January 13, 2018, the date that it was received by them.

Although January 13, 2018, is only four days prior to the hearing, the Tenant testified that she is willing to allow the acceptance of the evidence for my consideration as she has had time to consider it. However, the Tenant wished me to note that she did not have sufficient time to submit documentary evidence in response to the Landlord's evidence and therefore would only be providing affirmed testimony. The Landlord's relevant evidence was therefore accepted for consideration in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the Two Month Notice?

If the Tenant in unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Two Month Notice in the documentary evidence before me, dated November 29, 2017, has an effective vacancy date of January 31, 2018, and gives the following reason for ending the tenancy:

- the Landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant

The Landlord testified that the Two Month Notice was posted to the door of the Tenant's rental unit on November 29, 2017, and the Tenant acknowledged receiving it on November 30, 2018.

The Tenant alleged that the Two Month Notice was served in bad faith as the Landlord has been trying to evict her for some time without success. The Tenant stated that there was a previous dispute regarding a different Two Month Notice and that the arbitrator found in her favor. The Tenant provided me with the file number for the previous hearing but did not provide me with a copy of that decision for consideration. The Landlord acknowledged that there was a previous hearing in relation to a different Two Month Notice which was served because his father intended to occupy the suite. The Landlord also acknowledged that the arbitrator cancelled that Two Month Notice stating that he had not provided sufficient evidence to establish that his father was moving to the community occupy the suite.

The Tenant testified that it is her belief that the Landlord does not intend to complete the renovations as the quote received for the renovations was provided by the contractor site-unseen. In support of her testimony that the Two Month Notice was issued in bad faith, the Tenant provided copies of several e-mails between the Landlord and herself. In particular, the Tenant pointed to an e-mail dated October 19, 2017, in which the Landlord states that neither they, nor the other occupants of the house want her there and that she should be looking for another place to live as the situation is not working out. The e-mail also states that the Landlord has staff that will need the suite so the Tenant should be prepared to be forced to vacate.

The Landlord denied that the Two Month Notice had been issued in bad faith and testified that although there are other ongoing issues in the tenancy, the renovations are badly needed to address sound transfer and heating issues with the suite and the house in general and to add additional laundry facilities. The Landlord testified that the house was purchased along with a business in the remote community and that the primary function of the house is to provide accommodation for his employees. The Landlord stated that in addition to completing the renovations noted above, an additional suite will also be added to increase the accommodation available for his staff.

In support of his testimony and the grounds upon which the Two Month Notice was issued, the Landlord supplied a quote for the cost of the above noted renovations and an e-mail from the Mayor of the community attesting that no permit is required for the type of renovations being completed. The Landlord testified that vacant possession of the rental unit will be required as the renovations are quite extensive. The Landlord testified that the drywall will be removed from all walls and new insulation added, the ceiling will be sound proofed and dry walled, the water will be turned off in order to install a new kitchen and additional laundry facilities, and the furnace and ducting will need to be removed and a new heating source installed.

Both parties provided evidence and testimony in relation to the adequacy of the heating and laundry facilities. The Tenant alleged that their suite is the only suite with laundry and that prior to an order from another arbitrator granting her exclusive possession of the suite, the other occupants of the house were permitted entry to her suite by the Landlord for the purpose of doing Laundry. The Tenant also complained that she is required to use the wood stove in her unit as a primary heat source for the entire home as the furnace has been broken for many months. Although the Tenant's Application seeking an Order for the Landlord to provide services or facilities required by law and to make repairs to the unit, site, or property was dismissed with leave to reapply, I find this testimony relevant to the validity of the Two Month Notice as some of the renovations the Landlord asserts will be completed, relate to the issues the Tenant has identified as problematic in her tenancy and for which she has applied to have the Landlord make repairs.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act,* I find that the Tenant was served with the Two Month Notice on November 30, 2017, the date they acknowledged receiving it.

Section 49(6) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Although the Tenant has claimed that the Landlord is simply trying to evict her, it appears to me that several of the renovations to be completed by the Landlord are in direct response to the issues raised by the Tenant regarding the inadequacy of heating and laundry services. In fact, the Tenant herself filed an Application seeking repair or replacement of the furnace and heating systems.

Residential Tenancy Policy Guideline (the "Policy Guideline") #2 states that good faith is 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 means that the landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy which, according to Policy Guideline #2, might be documented through a local government document allowing a change to the rental unit and a contract for the work, among other things.

Although the Tenant has argued that the Two Month Notice was issued in bad faith, the Landlord has provided a quote for the renovations required, proof that he sought the permits required to complete the renovations, and proof that permits are not required for this work in accordance with Policy Guideline #2. While the Tenant pointed out that the quote for renovations was provided without having physically assessed the property, I do not find this fatal in and of itself to the Landlord's claim that they still intend in good faith to complete these renovations as the rental unit is located in a remote community and the Landlord does not currently have possession of the rental unit.

Despite the foregoing, Policy Guideline #2 also states that 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. In such cases the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy and that they do not have another purpose that negates the honesty of intent or an ulterior motive for ending the tenancy.

Although the Tenant has argued that the e-mail dated October 19, 2017, demonstrates that the Landlord had an ulterior motive for ending the tenancy, I find that this e-mail must be considered within the larger context of all of the evidence before me for consideration. The Tenant applied for an order for the Landlord to repair or replace the furnace and heating systems and the testimony and documentary evidence from both parties clearly establishes that the adequacy of heating and laundry facilities is an ongoing issue not only for the Tenant but other occupants of the residence. As a result, I do not find it unreasonable that the Landlord would want to take action on this issue by way of completing necessary renovations and improvements to the property.

I also do not find that the Landlord is prevented from exercising their rights under the *Act* to serve and enforce a Notice to End Tenancy for Landlord's Use of Property because there may be other ongoing issues in relation to the tenancy, provided they intend in good faith to use the rental unit for the purpose stated in the notice. Based on the testimony and documentary evidence before, I am satisfied that the Landlord has all the necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires vacant possession and that they intend in good faith to do so.

Based on the foregoing, the Tenant's Application to cancel the Two Month Notice is dismissed without leave to reapply. As the Tenant's Application is dismissed, I am required under section 55 of the *Act* to grant the Landlord an Order of Possession if the Two Month Notice complies with section 52 of the *Act* which states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form.

As the Two Month Notice issued by the Landlord is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, the Landlord is entitled to an Order of Possession effective at 1:00 P.M. on January 31, 2018.

In light of assisting the parties and preventing future disputes, the parties should also be aware that pursuant to section 49 of the *Act,* in addition to the amount payable to the Tenant under subsection (1), if 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 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, 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 not successful in their Application, I decline to grant recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M on January 31, 2018, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 24, 2018

Residential Tenancy Branch