Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL INVESTMENTS LTD
GATEWAY PROPERTY MANAGEMENT
BRISTOL BUILDING SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FF

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for End of Employment, dated October 24, 2017 ("1 Month Notice"), pursuant to section 48;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on January 31, 2018 lasted approximately 72 minutes and the "second hearing" on April 5, 2018 lasted approximately 83 minutes. The first hearing involved discussions regarding service of documents and potential settlement of the tenants' application. The second hearing involved discussions regarding service of documents and testimony by both parties.

Three agents representing each of the three named landlord companies (collectively "landlords") and the two tenants, tenant DW ("tenant") and "tenant DL" (collectively "tenants") and their legal representative attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties confirmed that they would not be calling any witnesses at both hearings.

Landlord GS ("landlord") confirmed that he was the owner of the company "landlord company BIL," "landlord FM" confirmed that she was the property manager for the company "landlord company GPM" and "landlord PD" confirmed that he was the owner of the company "landlord company BBSL." All three agents attended both hearings and confirmed that they had authority to speak on behalf of their respective companies at

both hearings. Both tenants confirmed that their legal representative had permission to speak on their behalf at both hearings; all three attended both hearings.

At the first hearing and as noted in my interim decision, pursuant to section 64(3)(c) of the *Act*, I amended the tenants' application to add the respondent company, landlord BBSL. The tenants filed an amendment on January 11, 2018, none of the landlords objected to this amendment at the first hearing, and an agent for landlord BBSL appeared at both hearings to represent the company. Therefore, I found no prejudice to either party in making this amendment.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

At both hearings, the landlords confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' written evidence package.

The first hearing on January 31, 2018 was adjourned because the hearing did not conclude after 72 minutes of attempted settlement negotiations.

At the first hearing, I provided specific instructions to both parties that they were not entitled to serve any further evidence prior to the second hearing. I issued an interim decision, dated February 1, 2018, adjourning the first hearing and outlining these specific instructions.

At the second hearing, the landlords confirmed receipt of additional evidence submitted by the tenants after the first hearing. The evidence was received by me at the Residential Tenancy Branch ("RTB") and the landlords on April 2, 2018. Although both parties were directed not serve any written evidence after the first hearing and prior to the second hearing, the landlords consented to me considering the tenants' late additional evidence because they had reviewed it and were prepared to respond to it verbally at the second hearing. In accordance with sections 88 and 90 of the *Act*, I find that the landlords were duly served with the tenants' late additional written evidence package and I considered it at the hearing and in my decision because the landlords consented and had a chance to review and respond to it.

At the second hearing, the tenant confirmed receipt of the landlords' 1 Month Notice on October 28, 2017 and tenant DL confirmed receipt on October 30, 2017. The landlords

named both tenants on the same 1 Month Notice but separate copies were sent to each tenant. In accordance with sections 88 and 90 of the Act, I find that both tenants were duly served with the landlords' 1 Month Notice.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below. The following testimony occurred at the second hearing.

The landlord testified regarding the following facts. Landlord company BIL owns the rental unit. The landlord is the owner of landlord company BIL and controls the decisions regarding the rental unit. Landlord company GPM is the former property manager of the rental unit. Landlord company BBSL is the current property manager for the rental unit.

Both parties agreed to the following facts. Both tenants continue to reside in the rental unit. The tenant moved into the rental unit on September 1, 1989; he previously occupied a neighbouring rental unit beginning on March 1, 1988. He became the landlords' main caretaker for the rental building from December 1, 2000 to December 28, 2017, pursuant to a signed employment contract between both parties, which offered him the rental unit specifically as part of his employment at a reduced rent of $935.00 per month. The tenant also paid a security deposit of $325.00 to the landlords at the beginning of his tenancy and the landlords continue to retain this deposit.

Both parties agreed to the following facts. Tenant DL moved into the rental unit with the tenant on February 1, 2003 and became the landlords' assistant caretaker for the rental building from June 1, 2004 to December 28, 2017. No employment contract was signed by both parties but tenant DL was offered the rental unit as a term of his employment.

Tenant DL was not charged a separate monthly rent for occupying the rental unit. The landlords issued a draft employment contract, which was not signed by tenant DL. Both the tenant and tenant DL received letters, both dated October 25, 2017, from the landlords, terminating their employment as main and assistant caretakers, effective on December 28, 2017. They also received the 1 Month Notice, asking them to vacate the rental unit due to an end in their employment.

The landlord provided a copy of the 1 Month Notice, which has an effective move-out date of December 28, 2017. The landlords issued the 1 Month Notice for the following reason:

- *Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.*

The tenants seek to cancel the landlords' 1 Month Notice and to recover the $100.00 filing fee for this application.

The landlord testified that he directed landlord company GPM to issue the employment termination letters and the 1 Month Notice to both tenants because he ended their employment as caretakers in the rental building. He said that he wanted a change in the management of the rental building because the tenants had been caretakers for too many years. He explained that at the time he issued the 1 Month Notice, he intended to hire a new caretaker and have this person occupy the rental unit.

The landlord stated that he hired a new caretaker on February 12, 2018, who has been living in another rental unit in the same building because the tenants have not vacated their rental unit. He claimed that he still intends for this new caretaker to move into the tenants' rental unit once the tenants vacate, and to stay there as part of his employment at a reduced rent. He maintained that he will be offering the current unit where the new caretaker is currently residing, for market rent to new tenants. He said that he is not required to offer two units at reduced below-market rates to the tenants and the new caretakers; he only has to provide one unit to one caretaker and the tenants are no longer caretakers in the rental building.

The landlord claimed that he has no bad faith intentions against the tenants, he just wanted a change in management for the rental building. He maintained that it was not appropriate for the tenants, as the former caretakers for the rental building, to be living in the same building as the new caretaker. He stated that he is not trying to acquire more money from the tenants through rent, despite issuing a Notice of Rent Increase,

dated September 25, 2017 ("NRI"), to the tenants effective January 1, 2018, to raise their rent from $940.00 to $977.00. He stated that he has not accepted their rent from January to April 2018 because he wants their tenancy to end.

The tenants dispute the landlords' 1 Month Notice. They did not dispute that their employment as caretakers for the landlords ended and they were issued employment termination letters and the 1 Month Notice on that basis. They disputed the landlords' good faith intentions under section 48 of the *Act*. They claimed that the landlords are intending to make a profit from the rental unit by re-renting it to new tenants at market value, which they say is between $2,000.00 to $3,000.00 per month, rather than the current rate that the tenants pay of $977.00 after the NRI was issued.

The tenants stated that the new caretaker was hired on February 12, 2018, well after the 1 Month Notice was issued on October 24, 2017, past the effective date of the notice on December 28, 2017, and past the date of the first hearing in this matter on January 31, 2018. They said that the new caretaker is currently living in another rental unit that is identical to the tenants' rental unit and that he can stay there since it is a similar unit and the landlords do not intend to move him into the rental unit. The tenants claimed that the landlords have alternative accommodation for the new caretaker and are obligated to fulfill their good faith intentions by keeping the new caretaker there. They explained that the landlords are obligated to allow them to remain in their rental unit particularly since they were living there before they were employed as caretakers for the rental building.

Analysis

In accordance with section 46(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the notice on October 28, 2017 and tenant DL received it on October 30, 2017. Both tenants applied to dispute the notice in this application filed on November 9, 2017.

Accordingly, I find that although the tenant's application was filed out of time, tenant DL's application was filed within the ten day limit under the *Act*. There was only one application filed by both tenants to cancel the same notice which named both tenants. Since the tenants said that they did not obtain their lawyer until after they filed their application, I find that these are exceptional and unusual circumstances and I provide the tenant with more time to make his application to cancel the 1 Month Notice, pursuant to section 66 of the *Act*, as he did not apply past the effective date of the

notice of December 28, 2017. I amend the tenants' application to add the application under section 66 of the *Act*, as I find that I would have had to make a decision regarding tenant DL's application in any event.

Section 48(1) of the *Act* establishes the grounds by which a landlord may end the tenancy of a person employed as a caretaker of a residential property of which the rental unit is a part, by giving notice to end the tenancy under the following terms:

> *(a) the rental unit was rented or provided to the tenant for the term of his or her employment,*
> *(b) the tenant's employment as a caretaker, manager or superintendent is ended, and*
> *(c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.*

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application to cancel the landlords' 1 Month Notice and I issue an order of possession to the landlords.

It is undisputed that the rental unit was provided to both tenants for the terms of their employment. Although only the tenant signed a written employment contract with the landlords, tenant DL agreed that the rental unit was offered to him as a term of his employment as an assistant caretaker. Despite the fact that both tenants resided in the rental unit prior to their employment as caretakers, I find that, and both tenants agreed that, the rental unit was provided as a term of their employment for many years, for the tenant from 2000 to 2017 and for tenant DL from 2004 to 2017. It is also undisputed that both tenants' employment as caretakers of the rental property was terminated effective December 28, 2017, pursuant to two termination letters, dated October 25, 2017, issued to both tenants. Accordingly, I find that the landlords' 1 Month Notice meets the requirements of sections 48(1)(a) and (b) of the *Act*.

Residential Tenancy Policy Guideline 2 establishes a test to determine the good faith requirement in section 48(1)(c) of the *Act*. This test is set out as follows:

- *The Residential Tenancy Act…allow a landlord to end a tenancy if the landlord intends in good faith to:*
    - *provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended…*

The above guideline establishes that if the "good faith" intent of the landlord is questioned by the tenants, "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 they do not have an ulterior motive for ending the tenancy."

The tenants claim that the landlords seek to end their tenancy in order to obtain market rent for the rental unit, which is more than double the amount for which it is currently being rented. They said that the landlords already have another unit, where the new caretaker is currently residing, that is the exact same layout and unit as theirs, so the landlords should use this alternative accommodation for the new caretaker.

I find that the landlords have the right to choose their own caretaker for the rental building, that they are entitled to end the tenants' employment as caretakers, that they are entitled to use the same rental unit for the new caretaker where the tenants were acting as caretakers, and that they are not obligated to house the new caretaker in another unit, regardless of whether it is similar to the tenant's rental unit. The landlords are entitled to use just one rental unit to house a caretaker at a prescribed rent, and are not obligated to continue the tenants' tenancy in the rental unit once their employment as caretakers ended. It is the landlords' rental building and they are entitled to run their businesses as they see fit, including choosing their own caretaker and rental unit to house that caretaker.

I also find that the landlords were not attempting to end this tenancy in order to raise the rent above market value and profit from the rental unit. Although the landlords issued an NRI to the tenants, it was a $37.00 monthly increase, within the allowable 4% *Residential Tenancy Regulation* amount set for 2018, not a large profit or above market value. The tenants testified that they paid this increase, voicing no objection to it. Further, the landlords did not accept this increased rent from the tenants from January to April 2018 because they wanted to end the tenancy and did not want to be seen as reinstating the tenancy.
Accordingly, I find that the landlords' 1 Month Notice meets the good faith requirements of section 48(1)(c) of the *Act*.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel the 1 Month Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

I find that the landlords are entitled to an **Order of Possession effective at 1:00 p.m. on April 30, 2018**, pursuant to section 55 of the *Act*. The landlords confirmed that the

tenants attempted to pay rent for April 2018 but the landlords refused it, which they are not entitled to do. Accordingly, I find that the tenants are entitled to possession of the rental unit until the end of April 2018. It is up to the landlords to collect the rent for the unit from January to April 2018, which the tenants confirmed at the second hearing, was still available to the landlords.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the landlords.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords **effective at 1:00 p.m. on April 30, 2018**. Should the tenants or anyone on the premises 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: April 10, 2018

Residential Tenancy Branch