



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, OLC,

Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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 landlord's agent (the agent) explained that he was representing the landlord as the landlord was on vacation and unavailable.

As Tenant VM (the tenant) confirmed that the tenants were handed the landlord's 2 Month Notice on or about March 1, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. The tenant testified that they sent the landlord a copy of the tenants' dispute resolution hearing package by registered mail on May 18, 2018. Although the agent was uncertain as to when the landlord received the tenants' hearing package, the agent confirmed that he had known about this hearing for a few weeks and had received a copy of the tenants' hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with this package. Since no concerns were made by either party as to their receipt of one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

The agent testified that another hearing was scheduled for this tenancy on June 28, 2018; the landlord plans to attend. After checking with RTB records, I confirmed that the hearing referenced by the agent was to consider an application by the landlord for an early end to this tenancy and for recovery of the landlord's filing fee. Both parties agreed that the only Notice to End Tenancy issued to the tenants by the landlord has been the 2 Month Notice, the subject of the current application by the tenants.

Much of the written evidence that both parties supplied involved a number of other concerns that the landlord had raised about this tenancy. Many of these appear to be related to the landlord's ongoing application for an early end to this tenancy. I advised the parties that the only issues I could consider with respect to the landlord's attempt to end this tenancy were those identified in the tenants' application to cancel the 2 Month Notice.

Issues(s) to be Decided

Are the tenants entitled to an extension of time to have filed their application to cancel the landlord's 2 Month Notice to End Tenancy? Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued against the landlord arising out of this tenancy?

Background and Evidence

The tenant testified that this tenancy for the lower suite in a two unit rental home began as a six-month fixed term tenancy in April 2017 by way of a written Residential Tenancy Agreement with the landlord. At that time, the tenants understood that a further one-year fixed term tenancy would follow the expiration of the first one. The tenant said that the tenancy has continued on the basis of the tenants' payment of \$1,100.00 in monthly rent plus \$80.00 in monthly hydro payments directed to the landlord. The tenant said that the landlord continues to hold the tenants' \$600.00 security deposit paid when they moved into the rental unit.

Neither party entered into written evidence a copy of the landlord's 2 Month Notice. Both parties agreed that the sole reason cited on the landlord's 2 Month Notice for ending this tenancy by May 31, 2018 was that the landlord needed the tenants to vacate the rental unit to enable the landlord to undertake repairs and upgrades to the electrical system in this building.

Only two of the paragraphs of the landlord's written evidence for this hearing provided reference to the landlord's reasons for ending this tenancy due to "renovations and electrical upgrades which requires the tenant to out of the suite." The landlord noted that the agent was a professional certified electrician who had "done electrical work on the entire house and the basement suite for many years." The landlord's written evidence, confirmed by the agent at this hearing, noted that the agent had "suggested and recommended that electrical work has to be done for the safety of tenants in the house and for the physical aspect of the house." The landlord's written statement also maintained that the agent had recommended that the tenants' use of oxygen within the suite were "causing breakers to pop." The landlord claimed that the agent maintained that it was "very dangerous to have any electrical work done with the use of oxygen tanks within basement suite."

At the hearing, the agent confirmed that he had done some electrical repairs on this basement suite. The agent did not dispute the tenant's assertion at the hearing that they had been told by

the landlord that the repairs conducted by the agent had been sufficient to resolve the problem with breakers in the rental suite that they had been experiencing. The agent testified that after thinking about the repairs he had conducted further he had concluded that major changes needed to be undertaken to the wiring of the tenants' rental suite, as the existing wiring presented a potential fire hazard. Although the agent said that the suite would not have to be subjected to a total renovation, the agent estimated that the renovations could take "a couple of weeks" to complete. He said that it might be necessary to have the upstairs tenants leave the rental unit for at least a day or two as well, which would only become apparent once the repairs had been commenced.

When questioned by the tenant, the agent confirmed the tenant's claim that if the tenants' oxygen tanks only require 4.3 amps of power, as they maintained, that this amount of power usage should not lead to the breaker boxes failing. The agent added that the oxygen tanks in addition to other ongoing power usages might be enough to trip the breaker boxes servicing the basement suite.

The tenant confirmed that the tenants had reported a problem with the breaker box tripping frequently; however, after the agent attended the premises about a month ago, the repairs had been resolved to the tenants' satisfaction. The tenant gave undisputed sworn testimony that the landlord had told them that the repairs to the electrical system had fixed the problem. The tenant's sworn testimony and written evidence maintained that the power used by the tenants' oxygen tanks was minimal. The tenant stated that both oxygen tanks had automatic shut-off features attached to the tanks, which automatically turned off this equipment if there were electrical overload problems present.

The tenant also gave undisputed sworn testimony that the landlord's 2 Month Notice was "a ploy to get us out of here." The tenant said that both tenants were very surprised to receive the landlord's 2 Month Notice as they had been told by the landlord that the electrical system had been fixed. The tenant noted that the landlord's written evidence and the upcoming hearing to try to end this tenancy early confirmed that the landlord had other motivations for seeking an end to this tenancy.

The tenant testified that if the repairs would only take two weeks, the time frame identified by the agent, the tenants could likely find alternate accommodation for that period of time.

Analysis

The tenant confirmed that the extension in seeking cancellation of the landlord's 2 Month Notice resulted from an apparent mistake made by the Residential Tenancy Branch (the RTB) in failing to process parts of the tenants' application. Based on the evidence before me and without any objection from the agent, I find that there is sufficient evidence that an important document that the tenants had submitted as part of their original application was overlooked by the RTB. In

accordance with section 66 of the *Act*, I allow the tenants' application for an extension of time to apply for cancellation of the 2 Month Notice.

As I have accepted that the application to cancel the landlord's 2 Month Notice is in order, the burden of proof in this matter transfers to the landlord. In order to end this tenancy and obtain an Order of Possession on the basis of the 2 Month Notice, the landlord must demonstrate on a balance of probabilities that the reason(s) cited on the 2 Month Notice were valid.

The grounds apparently cited on that Notice were as follows:

- *The landlord has all 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...*

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

„Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that 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 tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636...

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...

While the landlord and the agent may very well intend to undertake repairs and upgrades to the electrical system in this rental property, I also take into account that most of the landlord's written evidence for this hearing related to issues that would normally be cited in an application to end a tenancy for cause. Although the landlord has an upcoming hearing of an application to end this tenancy early, the landlord has not issued any 1 Month Notice to End Tenancy for Cause (1 Month Notice). Based on this evidence and the tenant's undisputed sworn testimony, I find that there is an element of validity to the tenants' concerns about the landlord's motivations for ending this tenancy on the basis of the 2 Month Notice.

Based on a balance of probabilities, I find that the extent of the repairs identified as necessary by the agent are not so significant that they would require the tenants to end their tenancy. The tenants expressed a willingness to move out of the rental unit for the anticipated two weeks that the agent would need to undertake these repairs. By being absent from the rental unit, the concerns the agent expressed about the safety of undertaking repairs while oxygen tanks were in use would also be remedied.

I also note that the issuance of an Order of Possession also relies on the following provisions of section 55(1) of the Act:

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 to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act reads in part as follows:

52 *In order to be effective, a notice to end 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, and*
- (e) when given by a landlord, be in the approved form.*

Without any copy of the landlord's 2 Month Notice having been entered into written evidence by either party, I am unable to confirm that the landlord's notice complied with section 52 of the Act. As noted above, this is a requirement the landlord would have to have demonstrated in order to obtain an Order of Possession should the tenants' application have been dismissed.

For the reasons outlined above, I find that the landlord has not demonstrated to the extent required that this tenancy should be ended based on a 2 Month Notice that was never submitted as part of the written evidence properly before me. Even if a copy of the 2 Month Notice had been entered into written evidence, I find that the rental unit does not need to be permanently vacated in order to undertake the renovations and repairs proposed by the landlord. I allow the tenants' application and set aside the 2 Month Notice. I make no other orders with respect to this tenancy.

Conclusion

I allow the tenants' application to cancel the landlord's 2 Month Notice. That Notice is set aside and is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 25, 2018

Residential Tenancy Branch