Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, PSF, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, an order for the Landlord to provide services or facilities, a rent reduction, and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both 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 was accepted for consideration in accordance with the Residential Tenancy Branch Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the Landlord acknowledged receipt of the Tenant's documentary evidence, the Tenant stated that due to her very busy work schedule, she has not had time to pick-up the registered mail sent to her by the Landlord and therefore has not had time to consider or prepare a response to the Landlord's evidence.

The Landlord testified that she sent two evidence packages to the Tenant by registered mail; one on June 22, 2018, and one on June 28, 2018. In support of her testimony the Landlord provided me with the registered mail tracking numbers. According to the mail service provider's website, the packages were sent as described by the Landlord. The tracking history states that for the first package, the first delivery notice was left for the Tenant on June 27, 2018, and that the final notice was left on July 2, 2018. For the second package the tracking history states that a first delivery notice was left for the Tenant on June 29, 2018, and that the final delivery notice was left on July 4, 2018.

The Tenant acknowledged receipt of the delivery notices dated June 27, 2018, and June 29, 2018.

Section 90 of the *Act* states that unless earlier received, evidence served by registered mail will be deemed received five days after it is sent. Although the Tenant stated that she has not had time to pick up the registered mail and therefore has not received the Landlord's evidence, I do not find a busy work schedule an exceptional reason for not receiving the registered mail. Further to this, I find it reasonable to expect that the Tenant, having filed an Application with the Residential Tenancy Branch (the "Branch"), ought to have known that the Landlord was entitled to respond and have been prepared to accept and review any such response in preparation for the hearing. As a result, I find that the Tenant was deemed served with the Landlord's evidence on
June 27, 2018, and July 3, 2018, respectively, and therefore accept this evidence for consideration in the hearing.

Preliminary Matter #2

In the Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. I find that the other claims made by the Tenant are not sufficiently related to the Two Month Notice or the continuation of the tenancy and as a result, I therefore exercise my discretion to dismiss the Tenant's claims for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, an order for the Landlord to provide services or facilities, and a rent reduction with leave to reapply.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the

hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Preliminary Matter #4

At approximately 10:20 A.M., just prior to the close of the hearing, the Tenant disconnected without notice. As the Tenant had stated part-way through the hearing that her phone battery was low, the Landlord and I waited on the line for the Tenant to reconnect. During that time, nothing was discussed. The Tenant reconnected shortly thereafter and the hearing continued for another 10-11 minutes without further interruption.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

Is the Tenant entitled to recovery of the filing fee?

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

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy began on April 1, 2017, and that rent in the amount of $1,000.00 is due on the first day of each month.

The Landlord testified that renovations are required to the rental unit, which is an older modular home, such as removal and replacement of the particle board subfloors in both bathrooms and possibly the kitchen, as well as replacement of the kitchen countertops. As a result, the Landlord stated that the Tenant will need to vacate as the water and electricity will need to be turned off for the repairs. Although the Landlord stated that trades people have assessed the property in the past, she acknowledged that no assessment of the property and the necessary repairs has been completed by a tradesperson since March of 2017, and that currently no contractors are booked to complete these repairs. However, the Landlord testified that a general contractor, a plumber, and an electrician will be required.

While the Tenant acknowledged that some repairs to the bathroom floors and the kitchen are required, she testified that at the time the tenancy agreement was signed, the Landlord committed to completing these repairs during the course of her tenancy and therefore questioned the Landlord's assertion that vacant possession is now required in order to complete them. Further to this, the Tenant expressed willingness to accommodate any necessary renovations or repairs or to briefly vacate the rental unit during the renovations and return under the same tenancy agreement upon completion. In any event, the Tenant testified that she spoke

with the municipality and was advised that permits are required for the proposed renovations, which the Landlord has not obtained or provided, as the floor of the manufactured home is considered structural. As a result, the Tenant stated that the Landlord has not in fact obtained all required permits and approvals required by law to do the renovations or repairs.

The Landlord denied that permits are required for the work and stated that she was expressly advised by the municipality that they were not. In support of her testimony she provided a copy of the bylaws for the municipality in which the rental unit is located. When asked, the Landlord acknowledged that it is likely possible to complete the required repairs in stages, however, she stated that she wished to complete them all at once if possible due to the significant cost increase of doing them over time.

Further to this the Landlord testified that she and her spouse are aging and wish to employ a caretaker for the farm on which the rental unit is located. As a result, she stated that the rental unit will converted for use by a caretaker of the property. While the Landlord acknowledged that no caretaker has been hired and no advertisement posted, she stated that one of her adult children will reside in the rental unit as the caretaker until a long-term employee can be found. The Tenant argued that a caretaker is not required for the property as both Landlords are able bodied. Further to this, she questioned the validity of the Landlords statement that one of their adult children may reside in the rental unit and act as caretaker in the interim due to the family dynamics.

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 April 27, 2018, the date they acknowledged receipt.

Section 49 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to;

- Demolish, renovate, or repair the rental unit in a manner that requires the rental unit to be vacant; or
- Convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. Although the Landlord sought to end the tenancy for renovations and repairs, both parties provided contradictory testimony regarding whether the subfloor of the modular home is a structural element and whether permits are required. Neither party submitted

documentary evidence in support of their position that the subfloors are or are not structural in nature. Further to this, the Landlord acknowledged that although it may be more financially cost effective to complete any required repairs and renovations with vacant possession of the rental unit, it was likely possible to stagger the renovations and repairs in such a manner that vacant possession would not be, as a matter of necessity, required. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that they have cause to end the tenancy under section 49(6)(b) of the *Act*.

However, the Landlord also sought to end the tenancy because she intends to convert the rental unit for use by an onsite caretaker and testified that her adult son will reside in the property and act as a caretaker until a permanent employee can be found. Although the Tenant argued that a caretaker is not required as both Landlords are able bodied, section 59 of the *Act* does not contain any requirement for the Landlords to demonstrate need for an onsite caretaker. Instead it only requires me to be satisfied that they intend, in good faith, to use the rental unit for this purpose. Further to this, I do not find the Tenant's testimony that the Landlords' son is unlikely to act as a caretaker and reside in the rental unit due to family dynamics persuasive, as there is no documentary evidence in support of this claim and family dynamics evolve and change over time.

Based on the above, I accept the Landlord's testimony that they intend to convert the rental unit for use by a caretaker and I dismiss the Tenant's Application seeking cancellation of the Two Month Notice without leave to reapply. As the Two Month Notice is signed and dated by the Landlord, contains the address of the rental unit and the reason 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. As the parties agreed that one month compensation was provided by way of free rent for June and that rent for July has been paid in full, the Order of Possession will be effective at 1:00 P.M. on July 31, 2018.

Despite the foregoing, both parties should be aware that should the Landlord fail to take steps to convert the rental unit for use by a caretaker within a reasonable amount of time after July 31, 2018, or fail to use the rental unit for this purpose for at least six months beginning within a reasonable period after July 31, 2018, the Tenant is entitled to file an Application seeking an amount that is the equivalent of double the monthly rent payable under the tenancy agreement pursuant to section 51(1) of the *Act*.

As the Tenant was unsuccessful, I decline to grant her recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on July 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: July 11, 2018

Residential Tenancy Branch