Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the *Act*.

Both parties 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 tenant testified that she served the landlord with the notice of dispute resolution proceeding package and her evidence by Canada Post registered mail on July 3, 2018, which was confirmed by the landlord. The landlord served the tenant with his evidence by Canada Post registered mail on August 8, 2018, which was confirmed by the tenant. Based on the testimonies of both parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act.*

Preliminary Issue – Procedural Matters

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's Two Month Notice to End Tenancy for Landlord's Use be cancelled, and if not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began in May 1984 and is currently ongoing. Monthly rent in the amount of $1,052.00 is payable on the first day of each month. A security deposit of $367.00 was paid by the tenant to the previous owner/landlord of the building. The tenant testified that her security deposit was returned to her in 2000, when the building was sold and ownership changed hands to the current landlord.

The rental property consists of a three-storey apartment building with 11 units, comprising one studio apartment, nine one-bedroom apartments, and one two-bedroom apartment. The rental unit which is the subject of this dispute is a one-bedroom apartment located on the second floor of the building. The landlord purchased the apartment building in 2000 and assumed all the existing tenancies in the building.

The tenant submitted into evidence a copy of the landlord's Two Month Notice which the landlord served on the tenant via Canada Post registered mail. The landlord submitted into evidence a Canada Post registered mail tracking report which shows that the notice was delivered and signed for as received by the tenant on June 27, 2018.

The Two Month Notice stated the following reasons for the issuance of the notice:

> *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The notice is signed and dated by the landlord on June 22, 2018, provides the address of the rental unit, states an effective vacancy date of August 31, 2018, and is on a Residential Tenancy Branch approved form.

On July 3, 2018, the tenant filed an application for dispute resolution to dispute the good faith intention of the landlord to use the rental unit for purpose stated on the Two Month Notice.

The tenant testified that she has resided in the rental unit for 35 years and is the second-longest residing tenant in the apartment building. The tenant stated that she has been an excellent

tenant, always paying her rent on time. She testified that her rental unit has never been renovated and that she pays less rent than the other similar units in the building.

The tenant has called into question the landlord's good faith intention to use the rental unit for the stated purpose provided on the Two Month Notice as she believes her unit was chosen to receive the notice because her rent is lower than the other units and that if it were renovated, the landlord would be able to charge significantly higher rent.

The landlord acknowledged that the tenant has been a "really good tenant" and that they will be pleased to provide her with a great reference.

The landlord testified that their motivation is to allow their 25-year-old son M.B. to live closer to his work. The landlord stated that their son currently lives at home with the landlord and his wife, does not own a car and has a challenge getting to his employment using public transit on days when he is required to start work at 4:00 a.m. By living in the rental unit, the landlord's son would be close enough to walk to his work. As well, the landlord stated that his son has agreed to help out around the apartment building. The landlord testified that his son has been working at his current job for approximately two years and has grown increasingly frustrated with his commute to work.

In support of his testimony, the landlord submitted into evidence a notarized statement signed by M.B. attesting to the above information.

The landlord confirmed that there are no other vacant suites currently available in the building, and that it has been over a year since there was a vacancy in the building.

The landlord acknowledged that the tenant's rent is one of the lowest in the building. Only the studio apartment pays less rent at $800.00 per month. The rent for one-bedroom units in the building ranges from $1,052.00 to $1,300.00, except for the one-bedroom penthouse unit which rents for $1,545.00.

When questioned to explain why the tenant's rental unit was selected, the landlord testified that the following criteria were considered to determine which rental unit would receive the notice:

1) Their son M.B. requested to live on the sunny south side of the building.
2) They did not want a ground floor unit for M.B. due to concerns regarding crime.
3) They felt a one-bedroom apartment was the right size for him, not a studio, which would be too small, or a two-bedroom which would be too big.
4) They wanted M.B.'s rental unit to be close to the rental unit occupied by the landlord's other son, A.B, who is M.B.'s brother.

The landlord's other son A.B. has resided in a third floor one-bedroom rental unit in the apartment building for approximately one year. A.B.'s rental unit is located directly above the tenant's rental unit.

After applying the above-noted criteria, the parties confirmed that there were only two rental units in the building that met the first three criteria – the tenant's rental unit and the rental unit next to her, which rents for $1,300.00 per month. The tenant's rental unit meets the fourth criteria of being "close" to A.B.'s rental unit as it is directly beneath A.B.'s rental unit.

In response to the tenant's question that if her rental unit was upgraded, a higher rent could be collected, the landlord stated that this was not a consideration in the decision to issue the tenant the Two Month Notice.

I explained to both parties that the recent legislative changes to the *Act* now provide significant compensation for a tenant when a landlord is found to have failed to have used the rental unit for the stated purpose given on a Two Month Notice. Section 51(2) of the *Act* requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline # 50 - Compensation for Ending a Tenancy provides the following clarification to the obligations of a landlord when they have ended a tenancy for the purposes of landlord's use, as follows, in part:

> This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.
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> A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

I further explained to both parties that section 51(1) of the *Act* provides that a tenant who receives a notice to end tenancy for landlord's use under section 49 of the *Act* is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Analysis

Based on the Two Month Notice entered into evidence by the tenant and the testimony and evidence of both parties, I find that the Two Month Notice was deemed served to the tenant on June 27, 2018, in accordance with sections 88 and 90 of the *Act.*

Section 49(3) of the *Act*, as noted below, allows a landlord to end a tenancy for their own use:

> A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord **intends in good faith to occupy the rental unit**.
>
> (**My emphasis added**)

As the notice was issued under section 49(3) of the *Act*, the tenant had 15 days to dispute the notice pursuant to section 49(8)(a) of the *Act*. There is no issue that the tenant filed the Application within the 15-day time limit set out in the *Act*.

Residential Tenancy Policy Guideline #2 - Ending a Tenancy: Landlord's Use of Property explains the 'good faith' requirement in section 49(3) of the *Act* and states in part at page two to three:

> 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.
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> 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.
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> Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:
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> - a notice to end tenancy for a rental unit that the landlord or close member is moving out of (for RTA section 49 (3) or section 49 (4));
>
> …
>
> If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

> If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the landlord has the onus to prove the grounds for the Two Month Notice.

In this case, the landlord testified that their son M.B. is going to move into the rental unit in order to be closer to his employment, which is walking distance from the rental property. Given that the landlord's other son A.B. has been residing in a rental unit at the rental property for one year, I find that this lends credibility to the landlord's assertion that his son M.B. intends to reside in the rental unit, and for an extended period of time.

Given that M.B. has been working for his current employer for two years, I find that this suggests that M.B. has some degree of commitment to his place of employment and therefore he would continue to reside at the rental unit over the long term as a result of the closer commute to his employer.

The tenant asserted that her rental unit was selected to receive the Two Month Notice because she pays one of the lowest rents in the building, and that her rental unit, if renovated, could garner significantly higher rent.

Although the landlord stated that this was not a factor in his decision, I find it unlikely that the landlord did not give some consideration to selecting the second-lowest paying rental unit in the building to receive the Two Month Notice. However, based on the testimony and the evidence of the parties, I do not find there is sufficient evidence to prove that this was an ulterior motive for issuing the notice, as there was no testimony or evidence presented by the parties that the landlord had ever tried, or even suggested, to increase the tenant's rent above the annual rent increase allowed by the *Act*. I also note that there is not a significant difference in the range of rent charged for the one-bedroom units in the building as they fall within a range of $250.00 per month.

There was also no evidence presented, nor any indication, that the landlord had made any previous efforts to end the tenancy, either by mutual agreement with the tenant, or by prior unsuccessful eviction attempts, in order to secure a new tenant at a higher rent.

Further to this, the tenant did not submit any evidence or testimony that the landlord had ever discussed or speculated about upgrading the tenant's unit to increase rental income. It is a reasonable assertion by the tenant that her rental unit would garner a higher rent if upgraded, however, just because this may be a valid observation, I do not find any evidence presented to

suggest that there was any intent on the behalf of the landlord to follow through in actualizing this potential opportunity.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that there is sufficient evidence that the landlord intends in good faith to use the rental unit for the stated purpose on the Two Month Notice, which is to have his son M.B. reside in the rental unit.

Therefore, I dismiss the tenant's application to cancel the landlord's Two Month Notice dated June 22, 2018.

When a tenant's application to dispute a landlord's notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Two Month Notice submitted into evidence by the tenant, I find that the Two Month Notice complies with the form and content requirements set out in section 52 of the *Act*, as follows:

> 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 a result, I find that the landlord is entitled to an Order of Possession. The Order of Possession will take effect at 1:00 p.m. on September 30, 2018.

Conclusion

The tenant's application to cancel the Two Month Notice is dismissed without leave to reapply and the Two Month Notice is upheld.

Pursuant to section 55 of the *Act,* I grant an Order of Possession to the landlord effective at **1:00 p.m. on September 30, 2018.** The landlord must serve this Order on the tenant as soon as possible. Should the tenant 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: September 17, 2018

Residential Tenancy Branch