



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT OLC

Introduction

This hearing dealt with the tenants' 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 (Two Month Notice) pursuant to section 49 of the *Act*,
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- an order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant M.D. attended on behalf of all the tenants named in the Application, assisted by S.R.

As both parties were present, service of documents was confirmed. The landlords confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding package and evidentiary materials sent by registered mail, and the tenants confirmed receipt of the landlords' evidentiary materials sent by registered mail. Therefore, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Procedural Matters

I explained to the 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

tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised 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 landlords' Two Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to any monetary compensation?

Have the landlords' contravened the *Act*, regulations or tenancy agreement and should be ordered to comply?

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 confirmed that there is no signed written tenancy agreement, however, both parties confirmed their understanding of the following information pertaining to their circumstances in this dispute and the terms of their verbal tenancy agreement:

- The landlord purchased the rental property in August 2018 and assumed this existing tenancy.
- This tenancy began on February 2006.
- Monthly rent in the amount of \$913.50 is payable on the first day of each month.
- The original security deposit paid by the tenants at the beginning of the tenancy was used by the tenants to apply against their rent at some point during the tenancy, with the agreement of the previous landlord. Therefore, the current landlords do not hold a security deposit from the tenants.

The rental property consists of a duplex with two separate rental units. The rental unit which is the subject of this dispute is one-half of the duplex.

The tenants submitted into evidence a copy of the Two Month Notice which the landlords served to the tenants on November 18, 2018 by leaving it in the tenants' mailbox. The tenants confirmed receipt of the Two Month Notice on the same day it was served.

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 November 18, 2018, provides the address of the rental unit, states an effective vacancy date of January 31, 2019, and is on a Residential Tenancy Branch approved form.

On December 2, 2018, within 15 days of receiving the notice, the tenants filed an application for dispute resolution to dispute the good faith intention of the landlords to use the rental unit for purpose stated on the Two Month Notice.

Both parties confirmed that there had been a previous arbitration hearing between the parties on November 2, 2018 as a result of the tenants disputing the landlords' Four Month Notice to End Tenancy served to the tenants on August 21, 2018. The landlords had served the Four Month Notice seeking to end the tenancy on the grounds that the landlords planned to pursue renovations to the rental unit that required vacant possession. The tenants submitted a copy of the previous arbitration Decision into evidence. In that Decision, rendered on November 2, 2018, the Arbitrator made the following findings, an excerpt of which is provided below, in favour of the tenants:

I find that the landlords have not met their burden of proof to show the 4 Month Notice was issued in good faith.

I find that the landlord is attempting to raise the tenant's rent by a substantial amount of \$1,381.50, which is not a valid reason to issue the notice. The landlord testified that the tenants can leave the rental unit temporarily and come back after the renovations are complete and pay a new rent of approximately \$2,295.00 per month. The landlord stated that with all the renovations completed, the tenants

would not be able to return to the unit and pay the same amount of rent of \$913.50, as it was not the current market rent. The landlord claimed that she had family members lined up to rent this unit after the tenants vacate, at a rate of \$2,295.00.

...

In this case, I find that an end to this tenancy is not required where the tenants can temporarily vacate the rental unit. The renovation period, estimated by the landlord, is six weeks, which I find to be a brief period of emptiness. Under these circumstances, I find that this rental unit is not required to be vacant during the renovations, which is a requirement of section 49(6)(b) of the Act.

In the matter currently under dispute before me, the landlords testified that they have been experiencing relationship difficulties since taking over the rental property. Landlord D.C. testified that he and his son currently reside in the basement “in-law” suite in the home that he has been sharing with landlord C.D. and her daughter. Landlord D.C. testified that he and landlord C.D. have not been living together since the end of September 2018.

Landlord D.C. testified that although he is the only owner named on the property title for the residence he currently shares with landlord C.D., he intends to move out of their shared residence and move into the rental unit. The landlords testified that they are both named on the property title for the rental property. Landlord D.C. testified that this was the arrangement agreed to between him and landlord C.D., and because he owns a landscaping business, the rental unit property provides more space than their current residence, so that landlord D.C. will have room to park his work trailer, truck and recreational vehicle.

The landlords testified that they did not discuss the issue of their relationship difficulties at the previous arbitration hearing, although in that hearing they did reference they had family willing to move into the rental unit, once renovated, at a significantly higher rent than the current rent. In the current hearing, the landlords stated that the “family” they eluded to in the previous hearing was actually landlord D.C.

In support of their testimony, the landlords submitted into evidence requests sent to their electricity, gas and internet/cable service providers changing over the account holder name from landlord D.C. to landlord C.D. at their residence and into landlord D.C.’s name at the rental unit. Also included in the landlords’ evidence was a U-Haul

truck rental reservation and a document signed by three people attesting to their agreement to help landlord D.C. and his son move out of their current residence into the rental unit.

The landlords testified that they have not yet taken any steps towards dividing their assets, and landlord C.D. stated that she is in the process of looking for a lawyer.

The tenants claim that the landlords have an ulterior motive to issuing the Two Month Notice and wish to evict the tenants in order to renovate the rental unit and re-rent at a higher rent amount, as referenced in the prior arbitration hearing. The tenants submitted into evidence a letter dated August 21, 2018 from the landlords in which it stated that the landlords:

“...plan to renovate [*address of rental unit*] as it is in need of new flooring, paint, drywall, kitchen cabinets, light fixtures, bathtubs, bathroom vanities, new appliances, windows and doors. In order for us to complete this work, we will require the property to be vacant.”

The landlords confirmed their understanding of the requirement of section 51(1) of the *Act* to provide the tenants with the equivalent of one month's rent payable under the tenancy agreement because the landlords issued the Two Month Notice to the tenants. As such, the landlords allowed the tenants to forego rent payment for the month of January 2019 in satisfaction of this compensation requirement.

The tenants are also seeking monetary compensation of \$310.20 for:

- The cost of the \$100.00 filing fee the tenants claim they paid to dispute the previous Four Month Notice issued by the landlords.
- \$100.00 for the current dispute application. I confirmed with the tenants that they did not pay the \$100.00 filing fee for this application as they received a fee waiver based on their financial situation.
- Administrative costs related to the preparation of the dispute application, such as registered mail costs, photocopying, etc.

The tenants have also sought an order against the landlords to prevent them from issuing any further notices to end tenancy against the tenants.

Analysis

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 tenants had 15 days to dispute the notice pursuant to section 49(8)(a) of the *Act*. There is no issue that the tenants 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.

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 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.

A landlord can establish that they truly intend to do what they said on the notice to end tenancy by providing evidence in support of their intention. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy, other than for the reasons stated on the notice to end tenancy.

In this case, the landlords have provided minimal evidence to support their claim that they are separating, and that landlord D.C. and his son intend to reside in the rental unit. The landlords submitted evidence of requests sent to the utility and internet/cable service companies to change over the account holder names, a U-Haul truck rental reservation, and a document signed by friends of the landlords confirming they would be help landlord D.C. move.

However, the landlords did not call any witnesses to provide testimony at the hearing to corroborate the landlords' claim that the parties are living separately in their shared home or that their relationship has broken down to the point where the parties have decided to live separately. The landlords acknowledged that they have not taken any steps to address the division of their shared assets, nor have they retained any legal counsel as yet, therefore no documentary evidence was submitted to establish a separation of the relationship or assets.

I also note that the rental property owned by the landlords consists of two rental units, one in each half of the duplex. The landlords' other rental unit is currently rented out at a significantly higher rent than the tenants' rental unit. The landlords did not provide any testimony regarding any consideration given to using the other rental unit as a residence for landlord D.C. Rather, the landlords testified that if they are not successful in this application, they will need to put the tenants' rental unit up for sale.

As explained in Policy Guideline 2, when the good faith intention of a landlord's notice to end tenancy for landlord's use is called into question, the landlord must satisfy the elements of two tests, on a balance of probabilities, as follows:

- 1) that they truly intend to do what they said on the notice to end tenancy; and
- 2) that they do not have another purpose or an ulterior motive for ending the tenancy

I recognize that it can be challenging to provide sufficient evidence to establish that there has been a relationship breakdown resulting in the parties deciding to live separately. Although the landlords have provided some evidence in support of their testimony, I find the evidence to be minimal, and to be of actions taken that can be

reversed or cancelled without significant cost or effort to the landlords should they decide not to follow through with the actions.

Most challenging for the landlords is the second test, given the situation surrounding the Four Month Notice issued by the landlords which was the subject of a prior arbitration hearing. I find it particularly challenging for the landlords given that they issued the current Two Month Notice only a couple of weeks after receiving the arbitration decision cancelling their Four Month Notice. Although the landlords testified that having landlord D.C. move into the rental unit was already something they had considered at the time of the prior arbitration hearing, as the relationship had already broken down at that point, they did not mention it in the hearing as they did not think it was relevant because it was a personal matter. Within four months of assuming this tenancy, I find that landlords have twice issued notices to end the tenancy for landlord's use for different reasons, or motives, which supports the tenants' claim of an ulterior motive behind the issuance of the notices.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlords have not provided sufficient evidence to establish that they intend, in good faith, to do what they stated on the Two Month Notice and to establish that they do not have another purpose or an ulterior motive for ending the tenancy.

As such, the landlord's Two Month Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Regarding the tenants' monetary claim for compensation, section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding administrative or disbursement costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. I conclude that this exclusion is intentional and includes disbursement costs such as registered mailing costs, printing and travel expenses. As such, the tenants are not entitled to compensation for any administrative costs pertaining to the preparation of their application.

I explained to the tenants in the hearing that they are not entitled to recover \$100.00 for a filing fee which they never paid, since they received a waiver for the cost of the \$100.00 filing fee for this application based on their financial situation.

I also advised the tenants that if they had paid the \$100.00 filing fee for the previous hearing, although I note they did not submit any evidence of this, I cannot re-adjudicate

any decisions made at the prior hearing regarding their recovery of the filing fee. The tenants are at liberty to request a correction or clarification pertaining to the prior arbitrated Decision of November 2, 2018, if they feel there was an error or oversight pertaining to the recovery of their filing fee in that Decision.

Therefore, I dismiss without leave to reapply the tenants' monetary claim for compensation of \$310.20.

Regarding the tenants' request for an Order against the landlord to direct them to comply with the *Act*, regulations or tenancy agreement, I find that the *Act* allows landlords to issue a notice to end tenancy for landlord's use, and that the landlords did nothing to contravene the *Act* by issuing the notice. I find there are no grounds for issuing an Order against the landlords to comply with the *Act*, regulations or tenancy agreement and therefore the tenants' claim is dismissed without leave to reapply.

Conclusion

The tenants' application to cancel the Two Month Notice is granted. The landlords' Two Month Notice dated November 18, 2018 is cancelled and of no force or effect. Therefore, this tenancy shall continue until it is ended in accordance with the *Act*.

The tenants' claims for monetary compensation are dismissed without leave to reapply.

The tenants' request for an Order for the landlords to comply with the *Act*, regulations or tenancy agreement is dismissed without leave to reapply.

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 17, 2019

Residential Tenancy Branch