Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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 gave undisputed sworn testimony that they represented the interests of their mother who actually owns the rental dwelling in question.

The landlord expressed confidence that they would likely be able to participate fully in this hearing without the assistance of the translator which they had arranged to have present during the hearing. The translator confirmed that they spoke the landlord's native language as well as English. The translator only became necessary on one occasion during the course of this hearing, and the landlord did not raise any concerns about understanding what was being said or asked during the hearing.

As the tenant confirmed that they were handed the 2 Month Notice by the landlord on June 24, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on July 15, 2019, they received a copy of the tenant's dispute resolution hearing package sent by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written

evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On April 18, 2015, the landlord and the tenant signed a Residential Tenancy Agreement (the Agreement) and Addendum for this entire rental dwelling. The first clause of the Addendum noted the following:

1. The apartment building has multiple apartments. The owner gives permission to the tenant to sublet the apartments and bedrooms...

The parties also signed a May 5, 2018 amendment to the Agreement, which included the following wording:

*1. The tenant is renting the property at *** for the express purpose of subletting three individual units (subletting two suites and in the suite the tenant occupies ,subletting the additional bedrooms in that suite)...*

At the hearing, the landlord claimed that there are only two authorized rental suites in this rental dwelling. As was noted by the tenant's advocate, this would seem to be at odds with information contained in the May 5, 2018 amendment signed by the landlord.

Monthly rent was set at $3,500.00, payable in advance on the first of each month. The landlord continues to hold a $1,750.00 security deposit paid when the Agreement was signed. The Agreement was subsequently renewed for a fixed term from March 1, 2016 until May 1, 2018, at which time the fixed term tenancy ended and the tenancy continued on a month-to-month basis.

The tenant and the tenant's advocate (the tenant's daughter) gave undisputed sworn testimony supported by written evidence that the tenant had clearly notified the landlord and obtained the landlord's approval that the tenant's daughter would be residing in this

rental property, although the tenant lived nearby. The tenant's advocate continues to live in one of the rental suites with sub-tenants living in bedrooms in that suite. The tenant's advocate said that seven people currently reside in this building. The tenant's advocate testified that at least three of these individuals have signed fixed term tenancy agreements with the tenant or the tenant's advocate, enabling them to stay there until the end of 2019, provided this tenancy continues until that time.

The landlord's 2 Month Notice required the tenant and all others occupying portions of this rental dwelling under this Agreement to end their tenancy by August 31, 2019 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord maintained that they had to vacate their current accommodations as a result of a marital separation with their spouse. The landlord testified that the landlord and the landlord's 14 year old son need to relocate to this rental property as the only other premises the landlord or the landlord`s family own is the building beside this one. The landlord said that they could not live there because the tenants in that building have a fixed term tenancy that is not scheduled to end until the end of April 2020. The landlord said that their brother also intends to move into this rental building with them, to be joined part of the year by their mother who lives in China half of the year and in this province the other half. The landlord said that this has become necessary since the landlord received a letter from their spouse's lawyer demanding that the landlord comply with the terms of a settlement agreement they signed on August 2, 2019 with their spouse to vacate the house where they have been living and owned by their spouse by "September 31, 2019." At the hearing, the landlord also described this as a "separation agreement" as well as a "divorce statement." The landlord said that although they live in the same house with their spouse, they live in separate sections of the house, and quarrel frequently when they do run into contact with one another, which the landlord noted was neither safe nor healthy for any of those living there.

The landlord entered into written evidence a copy of the lawyer's August 22, 2019 letter which the landlord maintained they received that day. This letter advised the landlord that if they and their family member (i.e., their 14 year old son) did not surrender possession of the premises to the landlord's spouse by that date that the landlord's spouse would be taking the landlord to court for possession of the property and would

seek costs. The landlord testified that they have nowhere else to go, disputing the claim by the tenant`s advocate that the landlord owns five other rental properties in the Lower Mainland.

The tenant's advocate testified that the landlord always referred to the person identified in the landlord's written evidence as his estranged wife as his "girlfriend" until the landlord was notified of their application to cancel the 2 Month Notice. The landlord responded that he had been married once before, but had married his current spouse in the summer of 2018. When asked as to when this occurred, the landlord said that this happened in June 2018, and upon further questioning said that his second wedding was on June 3, 2018. As the landlord's sworn testimony on this matter seemed hesitant, he was asked to identify which day of the week this wedding occurred. The landlord said that this was on Saturday, June 3, 2018. The tenant's advocate correctly noted that June 3 fell on a Sunday in 2018, calling into question whether the separation and divorce proceedings referenced by the landlord involved an actual marriage between the landlord and a current spouse.

There is also disputed evidence as to how long this rental property has been listed for sale. The landlord maintained that his mother has listed this property for sale on MLS listings for three years, although the most recent listing was with a different agent. The tenant's advocate gave more specific sworn testimony that the current MLS listing shows the property has been listed for sale for a total of 154 days, less than one half year. The tenant said that a "for sale" sign has only recently been placed on the property following the most recent listing. While the landlord said that the most recent listing resulted from a change in realtors, the landlord fully admitted that his mother has been attempting to sell this building and replace it with another building on a quieter street for some time.

The tenant and the tenant's advocate presented considerable undisputed sworn testimony and written evidence to call into question the extent to which the landlord was acting in good faith with respect to the landlord's claim that he intended to reside in the rental unit. They gave undisputed testimony and provided written evidence that for much of this tenancy the landlord has been either attempting to secure more monthly rent from the tenant or to have the tenancy ended for an ever-expanding host of reasons. The tenant provided a copy of a June 18, 2018 decision of an arbitrator appointed pursuant to the *Act* (see decision referenced above), in which the landlord's only other formal notice to end tenancy was issued to the tenant. On that occasion, the presiding arbitrator set aside the landlord's 1 Month Notice to End Tenancy for Cause

(the 1 Month Notice). In that decision, the arbitrator made the following comments and findings:

...Subsection 47 (1) (c) allows a landlord to end a tenancy by giving notice to end the tenancy if there are "an unreasonable number of occupants in a rental unit."

The rental unit consists of 3 rental units, which in total have 7 bedrooms. The Landlord submitted that "more than 10" occupants is unreasonable. The Landlord did not provide an exact number, and as such I cannot determine what an "unreasonable number" is if I do not have a number. The Tenant submitted that there are only 7 occupants residing in the building. I fail to see how 7 to 10 occupants is unreasonable in this building.

Taking into consideration all the evidence and testimony of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving, on a balance of probabilities, that the Tenant has allowed an unreasonable number of occupants in the rental unit.

Second, the Landlord did not provide any testimony or evidence regarding the second ground on which they issued the Notice, namely, that the Tenant has assigned or sublet the rental unit/site without the landlord's written consent. As such, and based on the Tenant's submission into evidence a copy of an Addendum which clearly permits subletting, I find that the Landlord has not met the onus of proving the second ground on which they issued the Notice.
Therefore, for the reasons outlined above, I find that the Landlord's Notice, dated April 29, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

I turn now to the Tenant's seeking of an order requiring the Landlord to comply with the Act, regulation, or the tenancy agreement. The Tenant seeks an order that prevents the Landlord from demanding that the Tenant obtain commercial insurance.

Based on the testimony of the parties, it does not appear to me that the Tenant would be able to obtain commercial insurance. While the Landlord may ask the Tenant to obtain commercial insurance, whether the Tenant obtained commercial insurance or not is not a ground on which the Landlord may end the tenancy...

The tenant and the tenant's advocate gave undisputed sworn testimony that whenever the tenant has raised any concerns about the state of repair of the rental dwelling, including such potentially damaging issues as leaks in the plumbing which may jeopardize the integrity of this structure, the landlord has refused to take action because the landlord believes that the tenant is not paying enough rent for this type of building. The tenant`s advocate asserted that the landlord appears to regret having entered into this Agreement, allowing the tenant to locate sub-tenants who have rented units and bedrooms within the rental property directly from the tenant. The tenant`s advocate asserted that the landlord`s subsequent discovery that the landlord was able to find tenants willing to pay more for the rental suites in the adjacent building, also owned by the landlord or the landlord`s family, appears to have affected all interactions between the landlord, the tenant and the tenant`s advocate. The tenant`s advocate maintained that the landlord`s remorse for signing this Agreement has led to ongoing and sustained attempts to end this tenancy or increase the rent to a level that the landlord considers comparable to others in this area.

Analysis

Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenant submitted their application to cancel the 2 Month Notice on July 8, 2019, they were within the time limit for doing so, and the landlord must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

(3)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.

While the landlord does not actually own this property, I am satisfied that they signed the Agreement with the tenant on behalf of their mother who is the registered owner of this property.

Residential Tenancy Branch Policy Guideline 2A has been issued to assist arbitrators in making determinations regarding 2 Month Notices issued to tenants when, as was the

case in this instance, the "good faith" of the landlord has been questioned by the tenants. This Policy Guideline reads in part as follows:

B. GOOD FAITH

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith...

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive...
As I explained during the hearing, the somewhat unusual terms of this Agreement did not create separate tenancy agreements between the landlord and those renting space from the tenant. As there is only the one Agreement between the landlord and the tenant, any valid 2 Month Notice issued by the landlord would enable the landlord to obtain vacant possession of the entire rental dwelling covered by the Agreement, even though this appears to encompass three separate and distinct rental suites with their own separate entrances and facilities. If the landlord were to obtain possession of the entire building, the landlord would be at liberty to enter into separate rental agreements with anyone currently occupying space within that dwelling.

In considering this matter, I should first note that I am tasked with considering the situation as it existed at the time the 2 Month Notice was issued, in this case, June 24, 2019. The landlord's principal evidence, the authenticity of which was questioned by

the tenant's advocate, involved the circumstances resulting from the landlord's receipt of a letter from the lawyer for landlord's spouse on August 22, 2019. This letter calling for the landlord's action to vacate the premises, where the landlord has apparently been continuing to live with his "separated' wife, by the end of September, was issued almost two months after the landlord handed the 2 Month Notice to the tenant. Also of note is the reference in the August 22, 2019 letter to a separation agreement entered into between the landlord and his spouse on August 2, 2019, which would have been completed over two weeks after the landlord received the tenant's application to cancel the 2 Month Notice in mid-July 2019.

Whether the rental property in questions has been for sale for three years as the landlord maintains or for 154 days as claimed by the tenant's advocate, I find that the evidence that the property was listed for sale by at least the date of the landlord's issuance of the 2 Month Notice calls into serious question the good faith of the landlord in claiming that they truly intend to reside in this rental dwelling for a period of at least six months, the time frame required under the legislation. This evidence alone might very well be sufficient to call into question the landlord's good faith in issuing this 2 Month Notice.

The undisputed sworn testimony of the tenant and the tenant's advocate as to the ongoing attempts that the landlord has undertaken to either obtain more monthly rent from them or to evict them, using a series of formal and informal tactics to end this tenancy, also raise serious questions about the landlord's good faith in issuing the 2 Month Notice. The only formal notice to end this tenancy for cause was dismissed in June 2018 by the previous arbitrator who considered the landlord's 1 Month Notice. The tenant's advocate gave undisputed sworn testimony that the landlord had told them "dozens and dozens of times" that they were not paying enough rent, especially compared to the building next door to this one also owned or managed by the landlord. The tenant's advocate gave undisputed sworn testimony that the landlord attempted illegally to increase the monthly rent from $3,500.00 to $5,000.00, instead of the limited percentage increases that would be allowed pursuant to the *Act.* Although the landlord signed the initial Agreement, containing clauses that they understood fully that the tenant intended to sublet this space to other renters, and that the tenant's advocate would be residing in one of the bedrooms in one of the suites, the landlord maintained that he had never agreed to allow so many people living in this rental building. On other occasions, the tenant and the tenant's advocate maintained that the landlord had claimed that the building had been sold, that permits had been obtained from the municipality allowing the landlord to use one of the suites as a showroom for the

proposed redevelopment, and that they needed to obtain commercial insurance, all of which required them to end their tenancy. The tenant's advocate gave undisputed sworn testimony that the landlord provided the tenant and/or the tenant's advocate with false information about each of these situations. The tenant also gave undisputed sworn testimony that it was very unlikely that the landlord, accustomed to living in a very expensive location elsewhere in this municipality, and with his flashy lifestyle and clothes, would live in this rental dwelling, which the tenant described as "a dump" on the outside, and which was initially purchased by the landlord's mother for demolition and redevelopment.

Although given a full opportunity to question the tenant and the tenant's advocate regarding all of the above noted concerns they raised about the landlord's history of attempting to end their tenancy or obtain more rent from them, the landlord did not choose to ask any questions or provide any comments when given an opportunity to do so. The landlord did not produce any witnesses to confirm his claim that he truly intended to reside in this rental unit with his son, with his brother who the landlord claimed will be joining him in this location, and his mother on a part-time basis. The landlord's chief written evidence all came into existence after the tenant applied to cancel the 2 Month Notice.

Based on the evidence before me, including the undisputed sworn testimony and written evidence from the tenants, I find on a balance of probabilities that the landlord has fallen considerably short of demonstrating to the extent required that the landlord is acting in good faith in issuing the 2 Month Notice for landlord's use of this property. The landlord's record of attempting to end this tenancy and raise the rent calls into serious question the sincerity of the landlord's motivations. By the landlord's own admission, they continue to live in the same dwelling as the spouse they have allegedly married and separated from, has a separation and divorce agreement with that same person, and continues to list the rental property where the landlord is claiming to be relocating to for sale, which could occur at any time. Section 49(3) of the *Act* and RTB Policy Guideline 2A were not designed to enable a landlord who is in the process of attempting to sell a property to evict seven people from their residences to enable the landlord to reside there for what could easily be a very short period of time should the ongoing attempt to sell the property prove successful.

I find that other than the landlord's sworn testimony, and circumstances, documents and agreements that only came into existence, somewhat conveniently, after the landlord received notification that the tenant was disputing the landlord's 2 Month Notice, the

landlord has provided little to contradict the tenant's claim that the landlord is not acting in good faith, I also would be seriously remiss, as was pointed out rather emphatically and correctly by the tenant and particularly the tenant's advocate, if I were to not consider what has all the hallmarks of an ongoing and sustained pattern displayed by the landlord in attempting to end this tenancy by whatever means possible so as to obtain increased rent and increase the marketability of the property which remains listed for sale.

Under these circumstances and based on a balance of probabilities, I find that the tenant has raised sufficient valid concerns that the landlord has not issued the 2 Month Notice in good faith. As such, I allow the tenant's application to cancel the 2 Month Notice. As the tenant has been successful in this application, I allow the tenant to recover their $100.00 filing fee from the landlord.

Conclusion

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

I issue a monetary Order in the tenant's favour in the amount of $100.00. As this tenancy is continuing, the tenant may choose to reduce a future monthly rent payment by $100.00 in order to give effect to this monetary award. In the event that this is not a feasible way to implement this monetary award, the tenant is also provided with a copy of this monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 06, 2019

Residential Tenancy Branch