



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPL, OPR, MNRL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 11, 2019, in which the Landlord sought the following relief:

- an order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use issued on September 22, 2019 (the "2 Month Notice")
- an order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 2, 2019 (the "10 Day Notice");
- a monetary order for unpaid rent; and,
- recovery of the filing fee.

The hearing of the Landlord's Application was scheduled as a teleconference hearing before me at 11:00 a.m. on November 8, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters—Issues to be Decided

The parties confirmed that a further hearing was scheduled at 1:30 p.m. on the same date as the hearing before me. This subsequent hearing was scheduled to deal with the Tenant's Application for Dispute Resolution filed on October 16, 2019. In that application the Tenant sought an order canceling the 10 Day Notice, as well as related monetary claims including: to dispute a rent increase, a rent reduction, and a request for monetary compensation from the Landlord. The Tenant also sought an Order for access to the rental unit, as well as authority to change the locks, Orders compelling the Landlord to comply with

the *Act*, *Regulations*, or tenancy agreement, make repairs, and provide services or facilities as required by law. Finally, the Tenant sought to cancel the 2 Month Notice.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Further, hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over other claims and are scheduled as soon as possible.

Hearings are also scheduled for only an hour, and while matters may be adjourned if they do not complete, Arbitrators are reluctant to adjourn time sensitive matters relating to the continuation of the tenancy as the prejudice to the parties in such situations can be significant.

As a hearing on the validity of the 10 Day Notice was scheduled at 1:30 the same day as the hearing before me, in conjunction with the Tenant's monetary claims, and in particular the Tenant's dispute over the rent increase, I determined that the priority claim before me was the validity of the 2 Month Notice.

Section 55 of the *Act* also provides that a Landlord must be granted an Order of Possession in the event an Arbitrator dismisses a Tenant's application to cancel a notice to end tenancy (and provided the Notice complies). As the Tenant's application with respect to the 10 Day Notice was scheduled that same day (and both parties confirmed their intention to call into that hearing), the Landlord was not prejudiced by my decision to deal with only the 2 Month Notice. In the unlikely event the validity of the 10 Day Notice is not be addressed during the 1:30 hearing, I dismiss, with leave to reapply, the Landlord's request for an Order of Possession based on the 10 Day Notice.

The Landlord's monetary claim is not related to the 2 Month Notice; as such, I dismiss the Landlord's monetary claim with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 2 Month Notice?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as follows. He confirmed that the rental unit is a one-bedroom basement suite in his home. The tenancy began March 3, 2017 and at the beginning of the tenancy the rent was \$650.00.

The Landlord stated that the Tenant's girlfriend moved into the rental unit in October of 2017 at which time the Tenant agreed to pay an additional \$100.00 per month. The Landlord confirmed that he did not have evidence of this as it was a verbal agreement.

The Landlord issued the 2 Month Notice on September 22, 2019. He confirmed that it was posted to the rental unit door on that date. The reasons cited on the Notice were that 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 Landlord stated that his 22-year-old daughter currently lives upstairs with her boyfriend who moved in with her approximately 1.5 years ago. He stated that it is his desire that his daughter and her boyfriend move into the basement suite.

Initially the Landlord stated that he also got a "new client" such that he is making more money and does not need the rental income anymore. He stated that he would like to have his privacy and would like his daughter to have her privacy as well.

The Landlord confirmed that his daughter is a student.

The Landlord also stated that he wanted the tenancy to end as the Tenant also did not pay his October rent on time.

Introduced in evidence was a letter from the Tenant indicating that the rental unit had suffered water damage. The Landlord also stated that in the summer of 2018, the Landlord's granddaughter got some water on the upstairs bathroom floor. Some of the water got through on the floor and soaked through the ceiling of the basement suite. Shortly thereafter the Tenant's girlfriend asked the Landlord to come downstairs and have a look at the bedroom ceiling. The Landlord entered the rental unit and saw that the ceiling was a bit damp. The Landlord claimed that the Tenant offered to fix the hole for free. The Landlord noted that at the time the Tenant did not mention any damage to his items, until a year later when he sent the letter claiming damage. The Landlord denied that he was trying to end the tenancy to avoid repairing the rental unit.

In response to the Landlord's testimony and submissions the Tenant testified as follows.

The Tenant stated that he believes that the Landlord's daughter is not going to move into the basement suite. The Tenant claimed that the reason the 2 Month Notice was issued is because he and the Landlord's daughter got into an altercation the day before the 2 Month Notice was issued. The Tenant stated that the Landlord's daughter was driving recklessly, passed him at a significant speed on the right, and almost caused a motor vehicle accident.

When the Tenant returned home, he sent an email to the Landlord's wife, L.P. about what had happened. The Tenant stated that he has an incredible relationship with the Landlord's wife, whom he calls "mom". The Tenant stated that in response, L.P., stated that she would speak with her daughter and her boyfriend and try to resolve it.

The Tenant stated that following this exchange, the Landlord then came downstairs to speak to the Tenant. He accused the Tenant of lying about his daughter's behaviour. The Tenant stated that the Landlord stormed out and came back 20 minutes later and served the Notice on him.

The Tenant further stated that at no other time did the Landlord ever say that his daughter wanted to move into the basement suite.

The Tenant also stated that there are two suites in the basement, one of which is occupied by the Tenant and the other, which is accessible to the upstairs and occupied by the Landlord's daughter and her boyfriend. The Tenant stated that to his knowledge the suite which is occupied by the Landlord's daughter and boyfriend has its own kitchen and bathroom.

In reply the Landlord confirmed that on September 22, 2019 he reviewed a text that the Tenant had sent to the Landlord's wife. The Landlord stated that he talked to the Tenant, who claimed that the Landlord's daughter, passed him going 120 km on the right. The Landlord confirmed that the Tenant asked the Landlord if he was calling him a liar. The Landlord claimed that the Tenant "got all upset and went into his unit".

The Landlord confirmed that later that day he served the 2 Month Notice.

In terms of the timing of issuing the 2 Month Notice, the Landlord stated that he had been thinking about this for a while and this incident was the impetus to issue the Notice.

The Landlord stated that his daughter and her boyfriend live upstairs, in a small bedroom beside the Landlord's bedroom. The other basement suite is occupied by the Landlord's step daughter and granddaughter, not his daughter and boyfriend as alleged by the Tenant.

The Landlord confirmed that his step daughter pays \$750.00 for the other basement suite.

Although the Landlord initially stated that he did not need the rental income, he then stated that he will be charging his daughter and her boyfriend rent but has yet to determine the amount.

In closing submissions counsel for the Tenant submitted that it was "extremely coincidental" that the day after an argument the Landlord issued the 2 Month Notice.

Counsel also submitted that the Landlord stated his daughter was a student, and doesn't work, yet also claimed she would pay an indeterminate amount of rent.

Counsel noted that there had been no issues for two years, that the Tenant got along well with the Landlord and his family, and the 2 Month Notice was merely a "knee jerk reaction".

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. The *Act* allows a landlord to regain possession of a rental unit for their own use, in prescribed circumstances.

The Landlord bears the burden of proving the reasons for ending the tenancy on a balance of probabilities.

The Tenant alleges the 2 Month Notice was not given in good faith. They allege that the real reason the Landlord seeks to end the tenancy is because of an altercation between the Tenant and the Landlord's daughter, the day before the 2 Month Notice was issued.

Residential Tenancy Branch Policy Guideline 2--Ending a Tenancy: Landlord's Use of Property provides in part as follows:

C. GOOD FAITH

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 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.

The evidence confirms that the Tenant reported the altercation he had with the Landlord's daughter, to the Landlord's wife. Following this, the Landlord came to the rental unit to speak to the Tenant. The Tenant claims the Landlord "stormed off"; conversely, the Landlord claims the Tenant accused the Landlord of calling him a "liar" and went back into his rental unit. However the conversation ended, I am satisfied that neither party was pleased with the interaction and the issue was not resolved.

I accept the Tenant's affirmed testimony that shortly after this conversation the Landlord issued the 2 Month Notice. I further accept the Tenant's testimony that at no time prior to this incident did the Landlord indicate his daughter would be moving into the basement suite. I do not accept the Landlord's evidence that he had been thinking about it for some time and this incident was the "impetus". In all the circumstances, I find the Landlord's ulterior motive is to end the tenancy because the Tenant and the Landlord's daughter do not get along. This is insufficient to end a tenancy.

The evidence submitted by the Landlord regarding his desire to move his daughter into the basement suit was minimal at best. Initially the Landlord testified that he "got a new client" and no longer needed the rental unit. In reply to the Tenant's submissions, the Landlord then testified that he would charge her an indeterminate amount of rent. Neither the Landlord's daughter, nor her boyfriend testified at the hearing

before me. I am not persuaded by the evidence before me that the Landlord's true intention is to move his daughter and her boyfriend into the rental unit.

I therefore dismiss the Landlord's claim for an Order of Possession based on the 2 Month Notice. The tenancy shall continue until ended in accordance with the Act.

As the Landlord has been unsuccessful in his application, I deny his request to recover the filing fee.

Conclusion

The Landlord's request for an Order of Possession based on the 2 Month Notice is dismissed.

The Landlord's request for an order of Possession based on the 10 Day Notice is dismissed with leave to reapply in the event the validity of the 10 Day Notice is not addressed at the subsequent hearing between the parties (which was scheduled for the same day as the hearing before me).

The Landlord's request for monetary compensation from the Tenant is dismissed with leave to reapply.

The Landlord's request for recovery of the filing fee is dismissed.

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: November 12, 2019

Residential Tenancy Branch