



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNRL, FFL // CNL, CNR, PSF, OLC

Introduction

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

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- cancellation of the 10 Day Notices to End Tenancy, pursuant to section 46;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

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

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlords, the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlords' notice of application for dispute resolution was confirmed and service of both of the tenant's

notice of applications for dispute resolution were confirmed, in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The tenant's applications for dispute resolution did not list landlord E.D. who is the spouse of landlord R.S.D. Pursuant to section 64 of the *Act*, I amend the tenant's applications to include landlord E.D.

Preliminary Issue- Tenant's Evidence

The tenant's advocate testified that the tenant's evidence package was uploaded to the Residential Tenancy Branch service portal on November 16, 2019. The Residential Tenancy Branch service portal does not show this upload.

The tenant's advocate testified that the landlord was served with the tenant's evidence package in person on December 24, 2019. No proof of service documents were entered into evidence. The landlord denied receiving the tenant's evidence package.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. The tenant bears the onus of proving that their evidence was served on the landlord. I find that the tenant has not proved, on a balance of probabilities, that his evidence was served on the landlord.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find that since the tenant has not met the required burden of proof to prove that the landlord was served in accordance with section 3.14 of the *Rules* and section 88 of the *Act*, the tenant is not entitled to submit late evidence to the Residential Tenancy Branch for consideration.

On the day of the hearing, the tenant's advocate uploaded an evidence package summarizing the evidence package the tenant's advocate testified she uploaded on November 16, 2019. I exclude this evidence package from consideration as it was uploaded less than 14 days before the hearing.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states 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.

It is my determination that the priority claim regarding the Notices to End Tenancy and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notices to End Tenancy.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notices to End Tenancy, pursuant to section 46 of the *Act*?
3. Are the landlords entitled to an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55 of the *Act*?
4. Are the landlords entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
5. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
6. Are the landlords entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

The tenant testified that this tenancy began approximately 16 years ago and is currently ongoing. The landlords testified that they could not recall when this tenancy began. Both parties agreed that monthly rent in the amount of \$650.00 is payable on the first day of each month. Both parties agree that there are two basement suites, one rented to the tenant and the other rented to different tenants and the landlords reside in the main portion of the house.

Two Month Notice

The landlords testified that on October 28, 2019 a Two Month Notice to End Tenancy for Landlord's Use of Property, with an effective date of December 31, 2019 (the "Two Month Notice"), was posted on the tenant's door. The tenant testified that he received the Two Month Notice between October 29 and October 31, 2019.

The Two Month Notice states the following reason for ending the tenancy:

- 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).

Landlord R.S.D. testified that he has a heart problem which makes going up and down stairs difficult and so he wishes to move into the subject rental property which does not have stairs. The landlords entered into evidence a letter from landlord R.S.D.'s doctor which states in part:

Because of his cardiac issues he gets very short of breath with minimal exertion, and chest pain and he needs this Nitrolingual spray to help relieve the pain. He has problem climbing stairs or even walking on level Street.

It would be helpful for him to live in his house where he does not have to climb stairs- because of his medical health and issues. As mentioned above, climbing stairs aggravates her [sic] symptoms this shortness of breath.

The tenant's advocate submitted that the landlord was acting in bad faith in issuing the Two Month Notice because the landlord had previously issued the tenant with a Two Month Notice which was cancelled following a Residential Tenancy Branch hearing. The tenant's advocate provided the file number for the previous decision which is recorded on the cover page of this decision. In that decision the arbitrator found that the landlords implied a waiver of the Two Month Notice to End Tenancy for Landlord's Use of Property because they continued to accept rent from the tenant after the effective date of the notice without noting that the rent was for "use and occupancy only".

The landlords testified that they did not mean to reinstate the tenancy by accepting rent from the tenant and so served the tenant with a new Two Month Notice to End Tenancy for Landlord's Use of Property after the first decision was received.

The tenant's advocate testified that the landlord wants to evict the tenant to avoid completing repairs requested by the tenant. No requests for repairs predating the Two Month Notice were entered into evidence. The tenant's advocate testified that if landlord R.S.D. wanted to move into a suite with no stairs, he could have moved into the other basement suite which was empty from July to December 2019.

The landlords denied seeking the end of the tenancy due to requested repairs and maintained that they completed repairs requested by the tenant. The landlords testified that the other basement suite is not as accessible from the main portion of the house as the subject rental property as the front doors of the subject rental property and the main portion of the house are next to each other and the other basement suite has a rear entrance. The tenant testified that the second suite is easily accessed from inside the main portion of the house.

10 Day Notices

The landlords testified that on November 2, 2019 the first 10 Day Notice to End Tenancy for Unpaid Rent, with an effective date of November 11, 2019, (the "First 10 Day Notice") was posted on the tenant's door. The tenant confirmed receipt of the First 10 Day Notice on November 4, 2019. The First 10 Day Notice states that the tenant failed to pay rent in the amount of the \$650.00 that was due on November 1, 2019.

The landlords testified that they sought advice from the Residential Tenancy Branch who told them that the First 10 Day Notice was not clear and could be thrown out at a hearing and were advised to serve the tenants with a clearer 10 Day Notice.

The landlords testified that on November 13, 2019 the second 10 Day Notice to End Tenancy for Unpaid Rent, with an effective date of November 23, 2019, (the "Second 10 Day Notice") was posted on the tenant's door. The tenant confirmed receipt of the Second 10 Day Notice on November 14, 2019. The Second 10 Day Notice states that the tenant failed to pay rent in the amount of the \$650.00 that was due on November 1, 2019.

Both parties agreed that the tenant usually paid rent by knocking on the landlord's door and providing it to the landlords and the landlords usually provided a rent receipt.

The landlords testified that the tenant did not attend at their door on or before November 1, 2019 to pay November 2019's rent. The landlords testified that they knocked on the tenant's door on November 1st and 2nd, 2019 to collect the rent but the tenant refused to answer the door even though he was home. The landlords testified that the tenant did not attempt to pay rent until December 1, 2019 when the tenant provided them with a bank draft in the amount of \$1,300.00 for November and December's rent, made out to landlord R.S.D.'s English first name, not his legal first name. Landlord R.S.D. testified that he used his proper legal first name on all the Notices to End Tenancy and that he could not deposit the money order in the form provided by the tenant.

The landlords testified that they informed the tenant of the error on the bank draft and that they received a new bank draft in landlord R.S.D.'s correct legal name on December 6, 2019. The landlords testified that they provided the tenant with a receipt for same on December 12, 2019 which states that rent is accepted for "use and occupancy only". The landlords testified that the tenant has not paid January 2020's rent.

The tenant's advocate testified that the tenant first attempted to pay the landlords with November 2019's rent on October 28, 2019 but the landlords refused to come to the door to receive it. The tenant's advocate testified that the tenant attempted to pay November 2019's rent again on November 1, 2019 but again the landlords refused to accept it.

The tenant's advocate testified that she wrote the landlord a letter dated November 14, 2019 which states that the tenant made several attempts to pay November 2019's rent before it was due, and that the landlord has refused to accept it. The November 14, 2019 letter, which was entered into evidence by the landlord, goes on to state that the tenant remains ready and willing to pay November's rent and would like to arrange a mutually agreeable time to do so. The tenant testified that he slid the November 14, 2019 letter into a crack in the landlord's door shortly after November 14, 2019. The landlords testified that they did not receive the November 14, 2019 letter until December 1, 2019 when they received four letters from the tenant's advocate dated November 10, 14, 29 and December 1, 2019. The tenant did not enter into evidence any proof of service documents.

The tenant's advocate testified that she wrote the landlords a letter dated December 1, 2019 which alleged that the landlord continuously refused to accept the tenant's rent and enclosed a bank draft in the amount of \$1,300.00. The tenant's advocate testified that tenant used landlord R.S.D.'s English first name as it was what he had called landlord R.S.D. for the duration of the tenancy and he did not realize the landlord had a different legal name.

The tenant's advocate testified that the landlords did not inform the tenant of the problem with the bank draft until December 6, 2019 and the tenant immediately provided the landlords with a new bank draft in the correct name the same day.

The tenant's advocate testified that the tenant has attempted to pay January 2020's rent but the landlords have refused to accept it.

Analysis

Two Month Notice

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenant by October 31, 2019, in accordance with section 88 of the *Act*. Upon review of the Two Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 49(3) of the *Act* states that 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.

Policy Guideline 2 explains the 'good faith' requirement as requiring 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 the Tenancy.

I find that landlord R.S.D. has proved, on a balance of probabilities, that he honestly intends to use the rental unit for his own personal use given his health concerns, which are evidenced by the letter from landlord R.S.D.'s doctor. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence admitted into evidence for this hearing.

I note that while the tenant's advocate argued that the landlord is evicting the tenant in an effort to avoid requested repairs, the tenant did not enter into evidence any requests for repairs made prior to the Two Month Notice being served on the tenant.

I found the letter from landlord R.S.D.'s doctor to be compelling and supportive evidence for the landlord's testimony that due to his health issues, he needs to move into the subject rental property which does not contain stairs. I accept the landlords' testimony that the proximity of the tenant's front door to that of the main portion of the house makes the tenant's unit more convenient an entrance than the second basement suite. The landlords are permitted to determine which basement suite would best suit their needs. I find that the landlords have met the required burden of proof to prove that landlord R.S.D. honestly intends to move into the subject rental property for health reasons.

I find that the issuance of a second Two Month Notice to End Tenancy for Landlord's Use of Property after the first was cancelled in the previous decision is not a sign of bad faith. I accept the landlords' testimony that they did not intend to reinstate the tenancy and once they learned they had done so, issued the tenant with another Two Month Notice to End Tenancy for Landlord's Use of Property as they still wished to use the subject rental property for themselves.

Based on the foregoing, I find that the tenant is not entitled to a cancellation of the Two Month Notice and I uphold the landlords' Two Month Notice.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the Two Month Notice complies with section 52 of the *Act* and the Two Month Notice was upheld, the landlord is entitled to an Order of Possession effective January 31, 2020.

As I have determined that this tenancy will end pursuant to sections 49(3) and 55 of the *Act*, I decline to consider if the 10 Day Notices should be cancelled or upheld.

As both parties agree that the tenant has not paid January 2020's rent, I Order the tenant to pay the landlord \$650.00 for January 2020's rent, pursuant to section 26, of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords in the amount of \$750.00.

The landlords are 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on January 31, 2020**, which should be served on the tenant. 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: January 08, 2020

Residential Tenancy Branch