Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on March 30, 2020, wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlords' Use, issued on March 23, 2020 (the "Notice") and to limit the Landlords' right to enter the rental unit.

Preliminary Matter—Tenant's Attendance at Hearing

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on May 22, 2020. Only the Landlords and their realtor, C.B., called into the hearing at the scheduled time.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and their witness and I were the only ones who had called into this teleconference.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

> **Commencement of Hearing:**
> The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.
>
> **Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

On this basis, I conducted the hearing in the absence of the Tenant.

As the Applicant, the Tenant bears the burden of proving his claim. Due to the Tenant's initial non attendance at the hearing, I initially dismissed his claim.

I was not provided a copy of the Notice in evidence although I did take oral testimony from the Landlord, J.D., as to the contents of the Notice. I also granted the Landlords permission to upload a copy of the Notice to the online service portal following the hearing. I informed the parties that I would review the Notice and if it complied with section 52 of the *Residential Tenancy Act* (the "*Act"*), in terms of form and content, I would grant the Landlords an Order of Possession.

At 11:28 a.m., the Tenant called into the hearing. He stated that it was his understanding that someone from the Residential Tenancy Branch would be calling him.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Act* and the *Residential Tenancy Branch Rules of Procedure.* At all times an Arbitrator is guided by *Rule* 1.1 which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Although at the time the Tenant called into the hearing, I had dismissed his Application, I advised the parties that I would reserve my judgment and allow the Tenant an opportunity to present his evidence in support of his claim as to decline to hear from him would deny him a fair opportunity to be heard. As well, even though it is his responsibility to call into the hearing at the scheduled time, I accept his testimony that he misunderstood these instructions.

Further, to simply affirm my dismissal of his claim and grant the Order of Possession on the basis that he did not call into the hearing at the schedule time, would likely result in the Tenant applying for Review Consideration pursuant to section 79 of the *Act,* which would further delay resolution of this matter.

Finally, I note that the Landlords confirmed their agreement to the matter proceeding.

All in attendance were provided and opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Following the hearing the Landlords uploaded a copy of the Notice. I confirm I reviewed the Notice in making this my Decision. The parties agreed that all other evidence had

been exchanged and no other 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties *and* relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Bias and Conflict of Interest

At the outset of the hearing I informed the Landlords that I personally knew their realtor, C.B., as I have lived in the community in which the rental unit is located as well as where C.B. works. I confirmed that I have never had any professional dealings with C.B. and have not lived in the community for many years.

When the Tenant called into the hearing, I also informed him of my familiarity with C.B. and the community in which the rental unit is located.

I offered both parties an opportunity to have the matter adjourned to another Arbitrator, and both parties confirmed they wished me to continue to hear the matter and were not concerned that I knew C.B.

Residential Tenancy Branch Policy Guideline 10—Bias and Conflict of Interest provides that an Arbitrator will refuse to conduct a hearing if they are satisfied there is a reasonable apprehension of bias.

I have never had any business dealings with C.B., nor have I ever socialized with her. Our familiarity stems from the fact the community in which the rental unit is located is small and most residents "know" each other. I have not lived in this community for nearly 30 years, although I do spend annual holidays in the area.

As noted, I fully informed the parties of my connection to the community in which the rental unit was located as well as my familiarity with C.B. Neither party expressed any concerns with me continuing to act as the Arbitrator and both parties waived their right to object to me hearing the case.

I find that a reasonable person would not conclude there is an appearance of bias on my part due to my familiarity with the Landlord's realtor and proceeded with the hearing.

Issues to be Decided

1. Should the Notice be cancelled?

2. Should the Landlords' right to enter the rental unit be restricted.

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence relating to the Notice first.

The Landlords provided written submissions in response to the Tenant's claim in which they write that the rental unit is in a triplex which they have owned for 25 years. The triplex has been sale for three years and has been for sale since the subject tenancy began November 2018.

The triplex has sold, and the completion date and occupancy date are June 1, 2020. J.D. confirmed that the purchasers provided the Landlords with written notice that they intend to occupy the rental unit. Accordingly, the Landlords issued the Notice.

A copy of the Notice was provided in evidence before me and confirmed it was served by posting to the rental unit door on March 23, 2020. The effective date of the Notice is May 31, 2020.

In response to the Landlord's submissions, the Tenant confirmed that he did not dispute the Notice in terms of whether the property had sold, and the purchasers wished for vacant possession; rather, he simply requested more time to move from the rental unit due to the COVID-19 pandemic. The Tenant confirmed he did not have any evidence to refute the Landlords' evidence that the property had sold. The Tenant also stated that he is actively looking for alternate accommodation and will move out as soon as he can.

In terms of his request for an order restricting the Landlords' right to enter the rental unit; the Tenant stated that he wanted to ensure the Landlords, or the purchasers, did

not enter the rental unit without his consent. He further stated that he wished to confirm the current restrictions imposed in response to the COVID-19 pandemic.

In reply, the Landlords' witness, C.B., stated that the purchasers are aware that an Order of Possession cannot be enforced during the state of emergency, and as such will move into the other units in the triplex and will move into the rental unit as and when the Tenant is able to move out.

Analysis

The Landlords issued the Notice pursuant to section 49(5) of the *Act* which reads as follows:

> (5)A landlord may end a tenancy in respect of a rental unit if
>
> (a)the landlord enters into an agreement in good faith to sell the rental unit,
>
> (b)all the conditions on which the sale depends have been satisfied, and
>
> (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
>
> (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
>
> (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I am satisfied the Landlords have entered into an agreement in good faith to sell the rental unit. I am further satisfied that all the conditions upon which the sale depends have been satisfied. Finally, I accept the Landlords' evidence that the purchasers gave the Landlords written notice to end this tenancy as they intend to occupy the rental unit.

It is also notable that although the Tenant filed to dispute the Notice, he did not dispute the Landlords' reasons for ending the tenancy or issuing the Notice.

I therefore find the Landlords have me the burden of proving the Notice.

I have reviewed the Notice and find that it complies with section 52 of the *Act* in form and content. As such, I find the Landlords are entitled to an Order of Possession. This Order will be effective 11:59 p.m. on May 31, 2020. The Order must be served on the

Tenant and may be filed and enforced in the B.C. Supreme Court, as and when such enforcement is possible.

The Tenant seeks an Order restricting the Landlord's right to enter the rental unit. As discussed during the hearing, a Landlord's right to enter the rental unit pursuant to section 29 of the *Act* has been limited during the current State of Emergency. Currently, and to encourage physical distancing and to minimize the transmission of COVID-19, a landlord may not enter the rental unit without the consent of the tenant (even if proper notice has been served) unless there is a risk to personal property or life.

For greater clarity I reproduce the relevant portions of *Ministerial Order No. M089, Residential Tenancy (Covid-19), Order of the Minister of Public Safety and Solicitor General,* under the *Emergency Program Act,* which came into effect March 30, 2020, and reads in part as follows:

> **Landlord's right to enter rental unit – *Residential Tenancy Act***
>
> 8 (1) Despite section 29 (1) (b) of the *Residential Tenancy Act* and sections 11 (2) (a) and (3) of the Schedule to the *Residential Tenancy Regulation*, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.
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> (2) If a landlord gave written notice under section 29 (1) (b) of the Residential Tenancy Act before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.
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> (3) Despite any section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:
>
> (a) an emergency in relation to the COVID-19 pandemic exists, and
>
> (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

The Tenant was encouraged to consider reasonable requests by the Landlords or the purchasers to enter the rental unit. He indicated he was concerned about transmission of COVID-19 and would likely refuse entry unless an emergency existed.

Accordingly, I grant the Tenant's request to limit the Landlords' right to enter the rental unit pursuant to section 29 of the *Act* as provided for in section 8 of the Order as provided for above.

Conclusion

The Tenant's Application for an Order canceling the Notice is dismissed.

Pursuant to sections 49, 52 and 55 of the *Act,* the Landlords are entitled to an Order of Possession effective 11:59 p.m. on May 31, 2020. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

The Tenant's request for an Order restricting the Landlords' right to enter the rental unit is granted to the extent the Landlords' rights in this regard are already limited by *Ministerial Order No. M089, Residential Tenancy (Covid-19), Order of the Minister of Public Safety and Solicitor General,* under the *Emergency Program Act,* which came into effect March 30, 2020.

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: May 27, 2020

Residential Tenancy Branch