Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC
MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenant's Application for Dispute Resolution was made on July 9, 2020. The Tenants applied to cancel a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") issued July 1, 2020, for an order for the Landlord to comply with the *Act* and for a monetary order for compensation for my monetary loss or other money owed.

The Landlord's Application for Dispute Resolution was made on July 18, 2020. The Landlord applied to enforce a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") issued July 1, 2020, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, permission to retain the security deposit and to recover their filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant testified that they had not received the Landlord's documentary evidence that I have before me. The Landlord testified that they had served the Tenant with their documentary evidence by two packages sent by registered mail, on July 28, 2020, and August 6, 2020, the Landlord provided two Canada Post tracking number as proof of

service. I find that the Tenant had been duly served with the Landlord's evidence package, in accordance with sections 89 and 90 of the *Act*.

The Landlord testified that they had not received the Tenant's documentary evidence that I have before me. The Tenant testified that they had not served their evidence package to the Landlord. Accordingly, as the tenant failed to serve their evidence package on the Landlord, I will not consider the tenant's evidence in my final decision.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Related Issues

I have reviewed both of the applications that I have before me, and I note that they have both applied to either cancel or enforce a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the request to the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

> **2.3 Related issues**
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> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to comply with the *Act* and for a monetary order for compensation for my monetary loss or other money owed. I am also dismissing with leave to reapply the Landlord's claim for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, and for permission to keep the security deposit and pet damage deposit.

I will proceed with this hearing on the Tenant's claim to cancel the Notice, and on the Landlord's claim to enforce the notice, and to recover the filing fee for this hearing.

Preliminary Matter – Adjournment Request

At the outset of these proceedings, the Tenant requested an Adjournment in order to serve their evidence package on the Landlord. The Tenant testified that they had not understood the requirement to serve their evidence package on the Landlord 14 days before the date of the hearing, as they had believed that they were the respondent and not the applicant to these proceedings, and as the responded they thought that they had until seven days before the hearing to serve their evidence to the Landlord.

When asked by this Arbitrator, what attempts they had made to serve their evidence package to the Landlord; The Tenant testified that on August 7, 2020, they saved their evidence package on a memory stick and had made one attempt at personal service to the Landlord, at the property next door to the rental unit. The Tenant testified that the Landlord was not at the residence next door when they attempted service, so they did not leave the memory stick. The Tenant offered no explanation as to why they did not make additional attempts at servicing their evidence package nor why they had not attempted service by other methods.

I have reviewed the Notice of Hearing document that was created as a result of the Tenants application; I noted that this document clearly shows that the Tenant was an applicant to these proceedings and explained the requirement to serve the Landlord with their evidence package pursuant to the Rules of Procedure.

Section 3.3 of the Rules of procedure state the following regarding the service of evidence for a cross-application:

3.3 Evidence for cross-Application for Dispute Resolution

Evidence supporting a cross-application must:

- be submitted at the same time as the application is submitted, or within three days of submitting an Online Application for Dispute Resolution;
- be served on the other party at the same time as the Notice of Dispute Resolution Proceeding Package for the cross-application is served; and

> • be received by the other party and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

Additionally, as the Tenant's claim included a request for a monetary order, the Tenant was required to serve their evidence to the Landlord pursuant to section 89 of the *Act*, which states the following:

> **Special rules for certain documents**
>
> **89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
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> (a) by leaving a copy with the person;
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> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

After reviewing the Tenant's testimony regarding service, I find that this Tenant willing chose to wait a full 30 days after filing their application for these proceedings before they made their first and only attempt to serve their evidence package to the Landlord, that they willingly chose to only attempt service by one of the available methods listed above, and when that method did not work, they willing decided to make no further attempts to serve their evidence package.

Overall, I find that it was unreasonable for this Tenant to make only one attempt to serve their evidence package to the Landlord and that it was also unreasonable of the Tenant to make no attempt to serve the Landlord at the Landlord residential address. An address that was clearly had been known to the Tenant, as the Tenant had included this address in their application for these proceedings.

I find that it would be procedurally unfair to this Landlord, who has attended these proceedings prepared to proceed, and who had served their evidence in accordance

with the *Act*, to grant the requested adjournment. Accordingly, I find it would be inappropriate to adjourn these proceedings.

Issues to be Decided

- Should the Notice issued July 1, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the Notice was served on July 1, 2020, by personal service. The Notice indicated that the Tenant is required to vacate the rental unit as of August 31, 2020. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they are moving into the rental unit.

The Tenant testified that they believed the Landlord had issued the Notice in ordered to sell the rental unit empty. The Tenant testified that the property had been up for sale when they moved in, in October 2019, and that the property had been removed from the market in December 2019, but that the property was again listed for sale again in March 2020.

The Landlord testified that they had previously attempted to sell this unit but that there had been difficulties with showings during the COVID-19 pandemic. The Landlord agreed that the property had been on the market between March 25, 2020, to June 21, 2020. The Landlord also testified that they had been living in another part of the province due to work but that their employment with that company has ended and they have decided to move back to the area in which this rental property is located, and that they have decided to live on this property themselves. When asked by this Arbitrator,

the Landlord testified that they will be living in this unit and have decided not to sell this property.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence that the Landlord served the Notice by personal service on July 1, 2020. Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until July 16, 2020, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on July 9, 2020, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

> *Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 the Tenancy.*
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> *If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*
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> *If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

I have reviewed all of the documentary evidence before me, and I find there is insufficient evidence to prove to me, that the Landlord had issued the Notice with ulterior motives.

I the absence of sufficient evidence, I must accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenants' application to cancel the Notice issued July 1, 2020.

Pursuant to section 55 of the Act, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. I have reviewed the Notice, and I find the Notice issued July 1, 2020, is valid and enforceable.

As this notice was issued on July 1, 2020, the date that these parties agreed that the rent was due, I find that the earliest date that this tenancy could end, in accordance with the *Act*, to be September 30, 2020. Pursuant to section 53 of the *Act,* I find that the effective date of this Notice is automatically changed to September 30, 2020.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on September 30, 2020**. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Additionally, both parties were informed of their rights and responsibilities pursuant section 51 of the *Act,* regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51 (2) of the *Act*, which states the following:

> **Tenant's compensation: section 49 notice**
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> **51** (1) **A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.**
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> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) **Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if**

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As this tenancy is ending in accordance with the Two-Month Notice, I find that there is no need to address the Tenants' additional claim for an order for the Landlord to comply with the *Act* in this Decision.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the filing fee paid for this application.

Conclusion

The Tenant's Application to cancel the Notice, issued July 1, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on September 30, 2020**. The Tenant must be served with this Order. 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.

I grant permission to the Landlord to retain $100.00 from the security deposit for this tenancy in full satisfaction of the amount awarded above.

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: August 14, 2020

Residential Tenancy Branch