



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes:

OPL, OPC, MNDCT, MNDL-S, MNRL-S, MNDCL-S, OLC, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use, for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on, or about, July 17, 2020 the Landlord's Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in July of 2020 was sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The male Tenant stated that on July 14, 2020 the Dispute Resolution Package and the evidence the Tenants submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On August 07, 2020 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was placed in the Tenants'

mail box on August 06, 2020. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party, with the exception of legal counsel, affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All of the documents submitted in evidence have been reviewed, however they are only referenced in this decision if they are directly relevant to my decision.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

At these proceedings I will consider the most urgent issue, which is possession of the rental unit. This includes the Landlord's application for an Order of Possession and the Tenants' application to cancel a Two Month Notice to End Tenancy for Landlord's Use.

I will also consider the Tenants' application to recover the cost of paying rent with a monetary Order, only because that issue was discussed in the "good faith argument" raised by the Tenants. As such, I find it expedient to consider this claim at these proceedings, rather than in a future proceeding.

I will also consider the applications to recover the fee for filing each Application for Dispute Resolution.

Any remaining issues in dispute are dismissed, with leave to re-apply.

Issue(s) to be Decided

Is the Landlord to an Order of Possession?

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Are the Tenants entitled to compensation for the cost of obtaining money orders to pay rent?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on December 17, 2019;
- the Tenants are still occupying the rental unit;
- the Tenants are required to pay monthly rent of \$1,050.00 by the first day of each month;
- on June 27, 2020, the Landlord personally served the female Tenant with a Two Month Notice to End Tenancy for Landlord's Use;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by August 31, 2020; and
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because the rental unit will be occupied by the Landlord or a close family member of the Landlord.

The Landlord stated that:

- she lives above the rental unit;
- prior to the COVID-19 pandemic she regularly met with members of a rug hooking group in a local community centre;
- the group is no longer able to meet in that community centre due to the pandemic;
- she intends to use the rental unit to host members of her rug hooking group;
- she intends to host 8 to 10 members at a time;
- the rental unit has a kitchen area, which is approximately 12'X8';
- the rental unit has a living area, which is approximately 20'X10';
- the rental unit has a den, which is approximately 10'X8';
- the rental unit has a bedroom; and
- she also intends to use an additional room in the lower portion of the residential complex, which is approximately 10'X16'.

The male Tenant stated that:

- he does not believe the rental unit is large enough to accommodate the rug hooking group while maintaining proper social distancing;
- the rental unit has a kitchen area, which is approximately 12'X12';
- the rental unit has a living area, which is approximately 14'X9';
- the rental unit has a den, which is approximately 10'X6';
- the rental unit has a bedroom;

- there is an additional area in the lower portion of the residential complex which he has never seen, so he does not know how large it is; and
- the Landlord has previously described this lower area as a “suite”.

The Landlord submitted an email, dated May 25, 2020, in which the author offers to host a garden party on June 24th for the purposes of rug hooking.

The Landlord submitted a text message, dated July 31, 2020, in which she informs members of her rug hooking group that she is in the process of “taking over” her “suite” for the purposes of establishing a studio.

The Advocate for the Tenants notes that the text message of July 31, 2020 was not sent until after the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant. She suggests that the Landlord may have sent that text message in an attempt to “gather evidence” in support of the Two Month Notice to End Tenancy for Landlord's Use.

Legal Counsel for the Landlord stated that the first meeting held by the rug hooking group since the COVID-19 pandemic began was on June 24, 2020. She stated that the group would not typically meet until the following month, which she contends is consistent with the timing of the text message sent by the Landlord.

The Tenants contend that the Two Month Notice to End Tenancy for Landlord's Use was not served in “good faith”. The male Tenant contends that the Landlord was displeased with the Tenants because she had been disturbed by their noise on at least 4 occasions since May 31, 2020. He stated that he complied with her request to reduce the noise levels on May 31, 2020, June 01, 2020, and June 07, 2020. He stated that when she complained about noise on June 17, 2020, he was laying in bed watching a television show. He stated that he told the Landlord that he would not be reducing the noise level again and that she would need to contact the police if she had further complaints.

The Landlord agreed that she complained about noise in the later evening of April 25, 2020, May 31, 2020, June 01, 2020, June 07, 2020, and June 17, 2020. She stated that on each occasion the level of noise was unreasonable for the time of night. She stated that on the first four occasions the noise level was reduced upon her request. She stated that the Tenants did not initially comply with her request to reduce the noise level on June 17, 2020.

Legal Counsel for the Landlord argued that the messages the Landlord sent on the aforementioned dates were not vexatious and that bad faith is not established simply because a landlord attempts to reduce unreasonable noise levels.

In support of the “bad faith” argument, the Advocate for the Tenants argued that the electronic messages being sent by the Landlord in regard to a variety of issues with the tenancy demonstrate the Landlord’s animosity towards the Tenants. She contends the Two Month Notice to End Tenancy for Landlord's Use was served because of this animosity.

Legal Counsel for the Landlord argued that the electronic messages being sent by the Landlord are not aggressive and do not use inappropriate language. She contends they do not demonstrate hostility or animosity on the part of the Landlord. She stated that the messages demonstrate the Landlord’s attempts to maintain quiet enjoyment in the rental unit; to collect rent; and to maintain the residential property.

The male Tenant stated that she believes the Landlord is attempting to end the tenancy because the Landlord is trying to “mother” him and she is unhappy when the Tenants do not immediately comply with her directions. He argued that it is “her way or the highway”.

The Tenants are seeking to recover costs associated to obtaining a monetary Order.

The Landlord stated that:

- rent was frequently paid in cash prior to April of 2020;
- in April of 2020 she advised the Tenants she would not accept cash payments due to the COVID-19 pandemic;
- she did not want to accept cash, in part, because she did not want to handle cash due to the pandemic;
- she did not want to accept cash, in part, because she did not want to enter the bank to deposit the cash
- she would have accepted payment by money order, cheque, or e-transfer, as she could deposit those payments through a bank machine;
- the Tenants never offered to pay rent by cheque or e-transfer; and
- the Tenants used money orders to pay rent for April, May, and June.

The male Tenant stated that:

- rent was frequently paid in cash prior to April of 2020;

- in April of 2020 the Landlord informed the Tenants that she would not accept cash payments due to the COVID-19 pandemic;
- he offered to pay rent by cheque, however the Landlord refused that form of payment;
- they used money orders to pay rent for April, May, and June;
- they were unable to obtain money orders for amounts that exceeded \$1,000.00, so they had to give the Landlord two money orders for each monthly payment; and
- they paid \$15.00 for each money order.

The Advocate for the Tenants submits that the Landlord would need to enter the bank to deposit a cheque or money order.

Legal Counsel for the Landlord submits that there is nothing in the Residential Tenancy Act (Act) that requires landlords to accept cash payments or to reimburse tenants for costs associated to paying rent.

Analysis

Section 49(4) of the *Residential Tenancy Act (Act)* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49(4) of the *Act*.

Residential Tenancy Branch Policy Guideline 2A reads, in part:

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.

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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not 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.

I am satisfied that the Landlord intends to occupy the rental unit and other areas in the lower portion of this residential complex to host members of her rug hooking group. In reaching this conclusion, I was influenced, in part, by the testimony of the Landlord. I found her testimony to be forthright and consistent, and I could find no reason to discount her testimony. I found her explanation that the group could no longer meet in the local community centre due to the COVID-19 pandemic to be highly believable, which serves to support her testimony that she will be using the rental unit to provide members of the group with an alternate meeting place.

After hearing the testimony regarding the size of the rental unit and, more importantly, viewing photographs of the interior of the unit, I am satisfied that the unit and the additional space in the lower portion of the residential complex is large enough to accommodate 8-10 crafters.

In concluding that the Landlord intends to occupy the rental unit and other areas in the lower portion of this residential complex to host members of her rug hooking group I was influenced, to some degree, by the text message dated July 31, 2020, in which the Landlord informs members of her rug hooking group that she is in the process of “taking over” her “suite” for the purposes of establishing a studio. Given the timing of the message, I cannot conclude that this message unequivocally establishes that the Landlord served this Two Month Notice to End Tenancy for Landlord's Use because she wishes to create a studio. I find, however, that it supports the Landlord's testimony in that regard, at least to some degree.

On the basis of the undisputed evidence, I find that the Landlord has asked the Tenants to reduce noise levels in the rental unit on at least five occasions. I note that the Tenants do not refute that there was noise emanating from their unit on each occasion.

I do not find it unreasonable for a landlord who is living above a tenant to ask a tenant to be quiet in the late evening/early morning hours. After reading the electronic messages sent to the Tenants regarding the noise, I find that the Landlord's request to reduce noise levels were made in a respectful manner.

On the basis of the undisputed evidence, I find that the Landlord has communicated with the Tenants on several occasions regarding the need to pay rent, plumbing/laundry issues, and proper methods of garbage disposal. I have read all of the messages submitted in evidence. I find that the Landlord's tone and manner in those messages was respectful and appropriate.

I cannot conclude that any of the messages the Landlord sent to the Tenants establishes that the Landlord served the Two Month Notice to End Tenancy for Landlord's Use in bad faith. Although the messages clearly indicate the Landlord was concerned about some of the Tenants' behaviours, they do not establish that the Landlord wished to end the tenancy because of that behaviour.

As I am satisfied that the Landlord intends, in good faith, to occupy the rental unit for her own purposes, I dismiss the Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use and I grant the Landlord an Order of Possession.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due. There is nothing in the *Act* that requires a landlord to compensate a tenant for any costs associated with the tenant complying with her/his obligation to pay rent.

Section 26(2) of the *Act* requires a tenant to provide a tenant with a receipt of rent paid in cash. There is nothing in the *Act* that requires a landlord to accept rent payments in cash.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant has suffered a loss as a result of the landlord breaching the *Act*. On the basis of the undisputed evidence, I find that the Tenants incurred costs when they paid their rent with money orders. As I am unable to conclude that the Tenants incurred those costs as a result of the Landlord breaching the *Act*, I dismiss the Tenants' claim for compensation for those costs.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing her Application for Dispute Resolution.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee for filing their Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on **August 31, 2020**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order of \$100.00 in compensation for the fee paid to file the Landlord's Application for Dispute Resolution. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order 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 *Act*.

Dated: August 18, 2020

Residential Tenancy Branch