



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

At the initially scheduled August 18, 2020 hearing of the Tenants' application, Tenant JLK (the Tenant) requested an adjournment of the Tenants' application to enable the other tenant, Tenant AGK, to participate in this dispute resolution hearing. I granted the adjournment request, and the parties were notified of the reconvened hearing scheduled for August 27, 2020 with my Interim Decision of August 18, 2020. At the reconvened hearing, Tenant AGK was available as were each of the individuals who participated in the original hearing on August 18, 2020.

This reconvened hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the Act) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both phases of this hearing were conducted via teleconference. The reconvened hearing was attended by both tenants; the landlord and the landlord's daughter who acted as the landlord's translator and advocate in this matter. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Tenant AGK confirmed that they received the landlord's 2 Month Notice placed on a chair outside their door by the landlord on June 25, 2020. Although the tenants confirmed that they received that Notice on June 25, 2020, they said that they did not open the envelope until June 28, 2020, out of safety precautions they instituted in response to the COVID-19 pandemic. The landlord's advocate (the advocate) objected to the tenants' claim that they did not open the envelope until June 28, 2020, noting that

if the tenants actually received the 2 Month Notice on June 25, 2020, they did not file their application for dispute resolution within the 15-day time period established pursuant to the Act.

During the global pandemic caused by COVID-19, Arbitrators have been given direction to take into account health concerns that parties have raised with respect to accepting documents from one another. Under these circumstances, I find that the benefit of this doubt should be given to the tenants, and find that the 2 Month Notice was deemed received on the third day after its deposit on a chair outside the tenants' door on June 28, 2020, the date that they said they opened the landlord's envelope containing the 2 Month Notice.

As the landlord's advocate said that the landlord received a copy of the tenants' dispute resolution hearing package sent to the landlord by registered mail on July 16, 2020, I find that the landlord was duly served with this package in accordance with section 89 of the Act. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the Act.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy began on July 1, 2019. Monthly rent is set at \$3,500.00, payable in advance by the first of each month.

The tenant gave undisputed sworn testimony that the COVID-19 pandemic has affected their ability to make a living and that they have not been able to meet all of their monthly rent responsibilities since the pandemic began. They stated that they made their rent payment for March 2020, but were unable to make any payment for April 2020. They tried to apply for a rent supplement from the Provincial Government, but were unable to obtain this supplement. They said that they have only been able to make partial rent payments to the landlord for the months of July and August 2020, but believe that they will be able to pay their rent in full for September 2020, in the event that the tenancy continues into that month.

The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reason for seeking an end to this tenancy by September 1, 2020:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord confirmed that they plan to move into this property with their family once the tenants vacate the rental property. The landlord's advocate testified that it has been the landlord's long-term plan to sell one of their two properties as they advance in years, as they realized that at some point they would not be able to pay mortgages on the two homes and pay for taxes and upkeep on two properties. They said that they had always hoped to sell the rental property, and use the proceeds from the sale to pay for the maintenance and upkeep of their oceanfront home where they currently reside. However, they have been unable to sell the rental property for the price they were seeking since at least July 2018, despite reducing the asking price at times. The landlord also entered into written evidence copies of various financial transactions that they maintain demonstrate that they have exhausted lines of credit and loans from family and friends to the extent that they can no longer afford to keep both the rental home and their oceanfront home where the family currently lives.

At the reconvened hearing, the landlord's advocate referred to written evidence that on July 25, 2018, the property was listed for \$1,199,000.00. The asking price on the listing was reduced to \$1,184,000.00 in November 2018. When the landlord again listed the rental property for sale on April 30, 2019, they were asking \$1,196,000.00 for the home. When the rental property did not sell, the landlord consulted with their realtor who believed that the oceanfront property where the landlord and the landlord's family currently reside, their only other property, would have a greater likelihood of selling than would their rental property. For this reason, the landlord issued the 2 Month Notice. They commenced the process of listing the rental property for sale on June 20, 2020, signed the listing contract on July 1, 2020, and have placed the property on a multiple listing service for sale as of July 9, 2020. The landlord's advocate said that they have not yet received any offers for the oceanfront home.

At the hearing, the landlord and their advocate confirmed that it is the landlord's intention to move into the rental property, hopefully by September 4, 2020. The advocate said that removing their furniture and possessions from the oceanfront home will enable them to better prepare the oceanfront home for sale and without anyone living there it will make it easier to sell that home. When asked by the tenant about their

moving plans, the advocate said that their family and friends intend to move their furniture from the oceanfront home to the rental property in their family's truck.

The tenants questioned whether the landlord and their family were acting in good faith in issuing the 2 Month Notice. They noted that a June 30, 2020 email from the landlord advised the tenants that their failure to pay monthly rent during the COVID-19 pandemic was causing financial hardship for the landlord as they relied on this rental income to meet their financial commitments. The tenant maintained that provincial government programs and orders were put into place during the COVID-19 pandemic to ensure that tenants would not lose their residence for non-payment of rent.

The tenant asserted that the landlord's 2 Month Notice is designed to circumvent the existing restrictions imposed by the province that prevents landlords from evicting tenants for the non-payment of rent. At the two hearings and in their written evidence the tenants maintained that the COVID-19 pandemic has come at a particularly difficult time for them as a death in the family and serious illnesses to aged family members have compounded their financial difficulties. They asked that the landlord's 2 Month Notice be cancelled as they believe it was not issued in good faith and is an attempt to obtain possession of the rental unit so the landlord can obtain tenants who can afford to pay their asking rent.

Tenant AGK also asked that the landlord consider rescinding the 2 Month Notice. The tenants said that they will be able to pay monthly rent again in September 2020. Tenant AGK observed that it would be better for the landlord's financial situation if the landlord were to be receiving monthly rent from them while they try to sell the oceanfront home. The landlord refused this proposal.

Analysis

Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As I am satisfied that the tenants were within the time limit for doing so, the landlord must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

(3) 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.

Residential Tenancy Branch Policy Guideline 2A has been issued to assist arbitrators in making determinations regarding 2 Month Notices issued to tenants when, as was the case in this instance, the "good faith" of the landlord has been questioned by the tenants. This Policy Guideline reads in part as follows:

B. GOOD FAITH

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 (s.32(1)).

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...

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...

In considering this matter, I disagree with the tenants' assertion that the history of the landlord's attempts to sell the rental property and the financial problems the landlord has been having demonstrate that the landlord is not acting in good faith in issuing the 2 Month Notice. By contrast, I find that this evidence supports the landlord's claim that they have been trying for an extended period of time to sell at least one of the houses that they own. When the COVID-19 pandemic struck, arrangements for showing rented homes became more difficult. The landlord's deteriorating financial situation became

more pronounced, compounded as it was by reduced income from the rental property. I attach little significance to the tenant's claim that the June 30, 2020 email demonstrates the landlord is not acting in good faith in issuing the 2 Month Notice. In fact, I find that this email lends further support to the difficult predicament that the landlord was facing, which prompted the landlord to put his own oceanfront home up for sale. Under these circumstances, I find that the landlord has arrived at a reasonable plan with assistance from their realtor to list their current oceanfront home for sale, a property that may very well be more likely to sell on the real estate market.

I am sympathetic to the tenants' concerns about the disruption that finding alternate accommodation will have for their family during the current pandemic. The tenants asked the landlord to consider withdrawing the existing 2 Month Notice and replacing it with a subsequent one once their oceanfront home does sell.

While this would no doubt be a beneficial solution for the tenants, the landlord had every right to reject their proposal. Given that the tenants have made no plans to vacate the rental property, despite having received the 2 Month Notice in late June, the landlord may be understandably hesitant about relying on the tenants to honour any subsequent 2 Month Notice that might be issued. If this were to occur, the landlord could very well be in a situation where they would have nowhere to live in order to honour a commitment to surrender possession of their oceanfront home on the closing date of the sale of that property.

I also find merit in the argument presented by the landlord's advocate that vacating the oceanfront home will make it much easier to prepare that residence for a successful sale to prospective purchasers. Prospective purchasers may also find it much more attractive to purchase a home that is already vacant and is not subject to a vendor's issuance of a 2 Month Notice to take back possession of a rental property that the vendor owns.

In the final analysis and based on the above-noted considerations, I accept that the landlord has issued the 2 Month Notice in good faith and truly intends to move into the rental property so as to improve their chances of being able to sell their oceanfront home. For these reasons, I dismiss the tenants' application to cancel the 2 Month Notice.

Section 55(1) of the *Act* reads as follows:

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.*

Section 49(7) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.” I am satisfied that the landlord's 2 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on September 1, 2020, the effective date identified by the landlord on the 2 Month Notice. The landlord will be given a formal Order of Possession which must be served on the tenant(s).

As the tenants have been unsuccessful in their application, I also dismiss their application to recover their filing fee from the landlord.

Conclusion

The tenants' application is dismissed without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective September 1, 2020. Should the tenant(s) 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: August 27, 2020

Residential Tenancy Branch