Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") under section 49 of the *Residential Tenancy Act* ("Act"). In addition, they applied for recovery of the filing fee under section 72 of the Act.

The landlord and one of the tenants attended the hearing on January 8, 2021, which was held by teleconference and which commenced at 11:00 AM. The landlord dialed into the hearing at 11:05 AM and the tenant dialed into the hearing at 11:16 AM. I was, it should be noted, able to hear from both parties, though the landlord gave most of her testimony before the tenant joined the hearing. I provided a brief recap of the landlord's testimony to the tenant but did not have the landlord repeat her submissions.

No issues of service were raised by the parties.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recovery of the application filing fee?

Preliminary Issue: Jurisdiction of the Act

Upon reviewing the tenants' application, there appeared to me some question as to whether this matter fell under the Act and whether I had jurisdiction. The landlord testified that the rental unit is a self-contained basement suite in the lower level of a house. The basement suite rental unit has its own kitchen and its own bathroom. The landlord (the female tenant's mother) reside in the upstairs part of the house. There is a shared laundry room that the landlord can access from the exterior of the house.

The tenants pay rent on a monthly basis (though sometimes, when they have the money.). There is, I find as a preliminary matter, no reason why the tenants' legal relationship vis-à-vis their renting of the basement suite does not fall under the Act. That the landlord and one of the tenants are a mother and a daughter does not, for familial reasons, exclude this tenancy from the Act. (The reason I asked if the rental unit has its own bathroom and kitchen is because, under section 4(c) of the Act, a tenancy does not exist when the tenant and landlord share a bathroom or kitchen.)

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The landlord testified that she served the Notice by taping it to the tenant's steering wheel on or about September 30, 2020. A copy of the Notice was in evidence. The landlord testified that the reason she issued the Notice is because she intends to occupy the rental unit while the upstairs portion of the house undergoes renovations. Those renovations are anticipated to take anywhere between one and one-and-a-half year to complete.

The tenant disputed the Notice on two grounds: (1) service of the Notice was incorrect, and (2) she does not believe that it is being issued in good faith. She argued that it is being issued for family-related reasons. At this point, without reproducing those reasons further, the mother-daughter relationship in this dispute is not what I would call a happy or healthy relationship. There are, according to the landlord, issues of fighting and yelling. "She [the landlord] wanted us to move out because she didn't want to hear us fighting anymore," the tenant remarked.

Further, the tenant questioned why a person would move into a basement suite when the upstairs is being renovated. And, she said that the landlord can still "sleep in her bedroom" (which is upstairs).

The landlord explained that the renovations are extensive and that the kitchen, living room, and electrical will be affected. She will have no electrical upstairs during parts or some of the renovation. She said that the renovations will be done in "bits and pieces" because she does not have $47,000 to do it all at once.

Analysis

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.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Briefly, I address the issue of service. A notice to end a tenancy must be served in accordance with section 88 of the Act. Section 88(i) of the Act refers to section 71(1) of the Act. Section 71(1) and 72(1) of the Act, specifically section 72(2)(c) of the Act states that "a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act"

While taping a copy of a notice to end tenancy to a tenant's steering wheel is highly unusual, in this dispute the tenant did, in fact, received the Notice. The tenants applied for dispute resolution based on their being served with the Notice. Given this, I find that the Notice was served in accordance with section 72(2)(c) of the Act.

Section 47(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.

The tenant disputed that the Notice was being given in good faith, and instead argued that it was being issued for other reasons. She further questioned why a landlord would want to reside in a basement suite when the upstairs are being renovated. However, the tenant did not dispute the landlord's assertion that there will, in fact, be renovations taking place over a year or more.

Based on the landlord's evidence, I am persuaded that the landlord intends to occupy the rental unit. That she intends, or may, still use her bedroom in the upstairs during the renovations does not negate her intention to occupy the rental unit. I find it wholly reasonable why a landlord would want to occupy a basement suite while the upstairs is being renovated. Whether the renovations are so extensive such that the landlord cannot even use the upstairs portion of the house is immaterial, as this is not a dispute

concerning renovations to the rental unit. While there may very well be relationship issues between the mother and the daughter, and while the daughter and her partner (the co-tenant) may be causing problems for the landlord, I find it relevant that the tenant did not, in fact, dispute that the landlord will end up occupying the rental unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. Thus, I dismiss the tenants' application in its entirety.

Section 55(1) 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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

> In order to be effective, a notice to end a tenancy must be in writing and must
> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the Notice and find that it complies with section 52 of the Act. Having dismissed the tenants' application, I thus grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision.

Conclusion

I dismiss the tenants' application, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and will go into effect at 1:00 PM on January 31, 2021. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: January 8, 2021

Residential Tenancy Branch