



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 14, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated September 30, 2020 (the “Notice”); and
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant filed an amendment with a new cell phone number.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with their daughters C.C. and M.X. to assist. I explained the hearing process to the parties. The parties provided affirmed testimony.

C.C. and M.X. provided the correct rental unit address which is reflected on the front page of this decision. The Tenant disagreed about what the correct rental unit address is; however, I am satisfied the Landlord as owner is in a better position to know the correct legal address of the rental unit. Further, if the rental unit address provided by C.C. and M.X. is wrong, this could negatively impact the Landlord but will not negatively impact the Tenant.

In the Application, the description relating to the request for an order that the landlord comply with the Act, regulation and/or the tenancy agreement raises issues that are covered by the dispute of the Notice. Therefore, I have considered the dispute of the Notice but not the further request for an order that the landlord comply with the Act, regulation and/or the tenancy agreement. The request for an order that the landlord

comply with the Act, regulation and/or the tenancy agreement is dismissed without leave to re-apply.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

C.C. and M.X. confirmed receipt of the hearing package and Tenant's evidence. The Tenant advised that they only served the 50 page PDF submitted to the RTB October 14, 2020 on the Landlord and not the further evidence submitted.

I told the parties the Tenant was required to serve all evidence submitted to the RTB on the Landlord and given this was not done, I would consider whether the evidence not served should be admitted or excluded. I heard the parties on this issue. C.C. and M.X. submitted that the evidence should be excluded because the Landlord did not receive it and the Landlord served their evidence on the Tenant. The Tenant disagreed that they were required to serve all evidence on the Landlord and submitted that the RTB package provided does not state this. The Tenant submitted that the evidence should be admitted because they put a lot of effort into getting it together.

Rule 3.14 of the Rules of Procedure (the "Rules") states:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent** and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing**.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

(emphasis added)

Rule 3.17 of the Rules states:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office **in accordance with** the Act or **Rules 2.5**

[Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, **3.14** 3.15, and 10 **may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.**

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice...

(emphasis added)

Given the Landlord received the 50 page PDF submitted October 14, 2020, it is admissible.

I exclude the remaining evidence and written submissions provided by the Tenant pursuant to rule 3.17 of the Rules. I find the Tenant failed to comply with rule 3.14 of the Rules by not serving the remaining evidence and written submissions on the Landlord. I find it would be unfair to the Landlord to consider evidence and written submissions the Landlord has not seen and could not address at the hearing.

The Tenant acknowledged receipt of the Landlord's evidence and therefore it is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony, the 50 page PDF submitted October 14, 2020 by the Tenant and the Landlord's documentary evidence. I will only refer to the evidence I find relevant in this decision.

Rule 6.10 of the Rules states:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

The Tenant was disruptive throughout the hearing and had to be put on mute numerous times throughout the hearing. The Tenant was argumentative, would not listen to what I was telling the Tenant, would not answer the questions I was asking the Tenant and continued to argue about the evidence service issue after I told the Tenant I would not hear about this issue further. I had to mute the Tenant so I could explain the expectations of parties at these hearings. I had to mute the Tenant so I could hear from the Landlord on the grounds for the Notice. I had to tell the Tenant that I would give them two more opportunities to provide submissions on the dispute of the Notice and if the Tenant was unwilling to do so I would conclude the hearing without hearing from the Tenant on the dispute of the Notice. I had to do this because each time I asked the Tenant for their submissions on the dispute of the Notice, the Tenant continued to argue about the evidence service issue. The Tenant subsequently provided submissions on the dispute of the Notice and I have considered these.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started February 10, 2019 and was for a fixed term ending August 31, 2019. The tenancy then became a month-to-month tenancy. Rent is due on the first day of each month.

The Notice was submitted as evidence. The Tenant did not take issue with the form or content of the Notice. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member and states that the child of the Landlord or Landlord's spouse will occupy the unit.

The parties agreed the Notice was served on the Tenant in person September 30, 2020.

M.X. testified as follows in relation to the grounds for the Notice. M.X. intends to move into the rental unit with her husband and toddler. Their family is currently living with their mother-in-law and they do not have their own space. They currently share the space including the kitchen with their mother-in-law. The situation is tense and there is conflict. M.X. needs space for themselves. M.X. is currently working at home. The

situation has caused health issues for M.X. who ended up in emergency due to the health issues. M.X. does not have privacy or their own personal space where they currently live.

M.X. further testified as follows. The rental unit address is a house with two suites. The Landlord lives in the upper suite. The rental unit is a private self-contained suite. The rental unit connects to another bedroom in the main house and therefore can be turned into a two-bedroom suite.

I asked M.X. why their family cannot move into the second suite given issues raised in the Tenant's Application. M.X. testified as follows. Their brother already occupies the other suite and they cannot kick their brother out. The other suite only has one bedroom which is not enough for their family given they have a toddler.

M.X. testified that the photos submitted by the Landlord are of the other suite and show that it is occupied by their brother. M.X. testified that their sister also lives in the house and that everyone works from home.

The Tenant testified as follows. There is a law saying a landlord cannot ask a tenant to leave if the tenant is paying rent and there is another vacant suite. The Landlord's son does not reside in the other suite. The photos submitted are fraudulent and show props. The Landlord's son lives upstairs. There are never lights on in the suite. The Tenant watches the suite and does not see the son come and go. The former tenant of the other suite was asked to leave and given no reason for this. Nobody occupies the other suite. The RTB has a right to send an RTB member to inspect the suite.

In reply, M.X. testified as follows. Their brother does not use the outside door to get into the suite because there is access to the suite from the front door. Their brother works night shifts and does not get home until late.

In reply, the Tenant testified that the Landlord's son may go in and out of the other suite because the family stores food in the suite and the children play in the suite; however, the son does not live in the suite permanently. There is only one legal suite and the Tenant was there first.

The Landlord sought an Order of Possession effective January 31, 2021.

In the written Application, the Tenant submits that the Landlord cannot ask the Tenant to leave during the pandemic. The Tenant also submits that the Landlord also said their

daughter was going to live in the other suite and this did not happen. The Tenant included the name and number of the previous tenant of the other suite in the materials. The Tenant also raised an issue about the Landlord not providing a further fixed term tenancy when the first term expired.

At the end of the hearing, there was a discussion about whether the Tenant was permitted to withhold rent given the Notice and if so, what rent amount.

The Landlord submitted photos of the other suite showing it is being used.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

A "close family member" is defined in section 49(1) as:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. There is no issue that the Tenant received the Notice September 30, 2020. The Application was filed October 14, 2020, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2A deals with ending a tenancy for occupancy by the landlord or a close family member and states 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 (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.

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 based on the photos submitted that the other suite in the house is occupied by the Landlord's son. I do not accept that the photos are fraudulent or show props as the Tenant did not submit sufficient evidence to support this.

I am satisfied based on the testimony of M.X. that the other suite in the house would not work for their family given it is a one bedroom suite and they have a toddler. The photos seem to support that the other suite is a one bedroom suite.

I am satisfied based on the testimony of M.X. that their family intends to move into the rental unit. I did not have any reliability or credibility concerns with the testimony of M.X. I found M.X.'s testimony detailed as to their current situation, why they need to move and why the rental unit will work for their purposes.

I am satisfied M.X. is the Landlord's daughter as I did not understand this to be an issue. Therefore, M.X. is a "close family member" of the Landlord.

Based on the testimony of M.X. and photos in evidence, I am satisfied it is more likely than not M.X. intends to move into the rental unit with their family. Therefore, I am satisfied the Landlord had grounds to issue the Notice and I uphold the Notice.

I find the following in relation to the Tenant's submissions.

I am satisfied based on the photos that the Landlord's son occupies the other suite in the house and therefore do not find that there is another vacant suite in the house.

Whether the suites are legal suites or not is not relevant to the issues I must decide. Whether the Tenant "was there first" or not is not relevant to the issues I must decide. The rental unit is the Landlord's property and the Landlord is entitled to end this tenancy in accordance with section 49(3) of the *Act*. I am satisfied the Landlord is ending this tenancy in accordance with section 49(3) of the *Act* for the reasons stated.

The Landlord was permitted to serve the Notice September 30, 2020 despite the pandemic. It was Emergency Order #M089 that prohibited landlords from issuing notices to end tenancy pursuant to section 49 of the *Act*. This Order was rescinded on June 24, 2020 by Emergency Order #M195. Landlords have been permitted to serve notices to end tenancy pursuant to section 49 of the *Act* since June 24, 2020.

I am not satisfied based on the evidence provided that the Landlord previously said their daughter was going to live in the other suite in the house. I do not find the Tenant's written assertions of this sufficient given the Tenant was not the tenant of the other suite at the time. There is no documentary evidence before me to support this. I acknowledge that the Tenant included the name and phone number of the previous tenant who lived in the other suite; however, the Tenant was required to call this person as a witness if the Tenant wanted this person to provide evidence on this hearing.

The Landlord was not required to provide a further fixed term tenancy agreement to the Tenant as the tenancy continued on a month-to-month basis which is permissible under the *Act*.

Given I am upholding the Notice, I dismiss the Tenant's dispute of the Notice. Section 55(1) of the *Act* states:

55 (1) 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.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*. I also note that the Tenant did not take issue with the form or content of the Notice.

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

Given I have upheld the Notice, dismissed the dispute of the Notice and found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession. Given the effective date of the Notice has passed, the Landlord is entitled to an Order of Possession effective at 1:00 p.m. on January 31, 2021 as requested.

Given I have upheld the Notice and this tenancy is ending pursuant to the Notice, section 51 of the *Act* applies and states:

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...

The Tenant submitted that they are entitled to two months free rent pursuant to the Notice. This is not accurate. The Tenant is entitled to one month free rent.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on January 31, 2021. This Order must be served on the Tenant and, if the Tenant does not comply

with this Order, it may be filed and enforced in the Supreme Court 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: January 19, 2021

Residential Tenancy Branch