Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP, LRE, LAT, RR, FFT,

Introduction

This hearing dealt two separate applications by the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The tenant applied on January 16, 2021 for:

- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

After receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) in their mailbox on January 25, 2021, the tenant applied for:

- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and 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. Although the landlord advised that their daughter was available to call into this hearing to provide evidence, this did not appear necessary as the tenant did not dispute the landlord's claim that the landlord's daughter was periodically using

an entertainment room on the lower level of this home for her telephone medical consultations in an area that is not part of the basement suite rented to the tenant.

As the tenant confirmed that they received the 2 Month Notice, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on January 26, 2021 and February 18, 2021, they received copies of the tenant's dispute resolution hearing packages sent by the tenant by registered mail, I find that the landlord was duly served with these packages in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written, photographic and digital evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Preliminary Matters

I should first note that another Arbitrator appointed pursuant to the *Act*, considered a previous 2 Month Notice issued to the tenant by the landlord on October 15, 2020, at a hearing on January 12, 2021 (see above). In that decision, the presiding Arbitrator considered only that portion of the tenant's application that pertained to the landlord's 2 Month Notice, dismissing the remainder of the tenant's application with leave to reapply.

In cancelling the landlord's 2 Month Notice of October 15, 2020, the Arbitrator provided the following reasoning in their decision:

...I note the Landlord stated that he wants the rental unit so that his son can move in. However, I note the Landlord did not provide any corroborative documentary evidence (such as affidavits, written statements, or other supporting documentation) to show his son has a plan to move into the rental unit. The Landlord simply stated that his son wants extra space, given his age, and the fact that he still lives upstairs with them. However, given the contentious situation, leading up to the issuance of the Notice, I do not find this is sufficient to demonstrate the Landlord's good faith intentions.

In making this determination, I note there is evidence to suggest that the Tenant started increasing her pressure on the Landlord to repair the noisy pipes in the weeks leading up to the issuance of the Notice. Further, the Tenant also had contentious interactions regarding making the repairs, asking the Landlord to give proper notice to enter the unit, and what exactly needed to be done in order to sufficiently address the issue with the noisy pipes. The Landlord served this Notice a matter of days after a series of negative interactions about the ceiling. The nature and timing of these interactions leads me to question the good faith intentions of the Landlord, especially given the lack of

corroborative evidence showing the Landlord's son has a need and a plan to occupy the space. I do not find the Landlord's testimony, and his explanations are sufficient to demonstrate his good faith intentions...

As I explained at the hearing, although the previous Arbitrator issued a final and binding decision, that decision applied only to the 2 Month Notice issued on October 15, 2020. Since the landlord issued a new 2 Month Notice on January 25, 2021, the issue before me requires a new consideration of these circumstances as to whether or not the landlord had reasonable grounds to end this tenancy for Landlord's Use of the Property when they issued that second Notice. While I have reviewed the previous Arbitrator's decision, entered into written evidence by the tenant, I am in no way bound by that Arbitrator's decision, even though the reason stated on the 2 Month Notice is essentially the same as the one issued on October 15, 2020.

As was the situation before the previous Arbitrator, I too have found it necessary to concentrate on the tenant's application to cancel the 2 Month Notice. While the tenant did make their application for repairs and a rent reduction before they received the landlord's new 2 Month Notice, section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Although in retrospect, it may have been better to deal with the tenant's applications at two separate hearings, the reality is that if the tenancy were to end in accordance with the 2 Month Notice of January 25, 2021, many of the remedies sought by the tenant in their first application would become moot as they rely on a continuation of the tenancy.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is to end on March 31, 2021, in accordance with the 2 Month Notice of January 25, 2021. The landlord's issuance of the 2 Month Notice on January 25, 2021, pre-dated the landlord's receipt of the tenant's application for dispute resolution on January 26, 2021.

Under these circumstances, I exercised my discretion to dismiss all of the grounds the Tenant applied for, with leave to reapply, with the exception of their application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice), to consider the tenant's application to recover their filing fee for their second application of February 1, 2021, and to consider whether any other orders be issued to the landlord to ensure the landlord complies with the *Act* or the Residential Tenancy Agreement (the Agreement) for this tenancy.

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? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover their filing fees for their applications from the landlord?

Background and Evidence

On October 5, 2017, the parties signed the Agreement, for a month-to-month tenancy for a one-bedroom suite in the landlord's basement that commenced on October 7, 2017. According to the terms of the Agreement, monthly rent was set at $950.00, payable in advance on the first of each month. Although the landlord maintained that they raised the monthly rent to $985.00 on November 1, 2018, the landlord gave undisputed sworn testimony that they have only been charging the tenant $950.00 in rent for the past several months. The landlord continues to hold the tenant's $475.00 security deposit.

The parties agreed that the tenant has paid their monthly rent for February and March 2021, and that the landlord has accepted these payments. These payments were accepted even though the landlord's issuance of the 2 Month Notice entitles the tenant to the equivalent of one month's rent as compensation for ending their tenancy.

The parties agreed that in addition to the tenant's separate one-bedroom suite, another portion of the basement, an entertainment room is used exclusively by the landlord and their family. The landlord entered photographic evidence of this other room, noting that expenses have been incurred by their adult son upon his return from studies abroad to install a large screen on one of the walls and establish it as their entertainment room. The landlord said that their adult son and adult daughter have been using this room for confidential meetings in their son's business as a lawyer and in their daughter's work as a medical doctor. They noted that privacy is important for these meetings during the global COVID-19 pandemic, as their adult children work from this meeting room periodically.

The landlord's 2 Month Notice seeking an end to this tenancy by March 31, 2021, entered into written evidence sought an end to this tenancy for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

As was noted earlier, this was the same reason identified on the earlier 2 Month Notice of October 15, 2020.

In contrast to the situation before the previous Arbitrator, the landlord entered into written evidence a detailed sworn affidavit from the landlord's adult son, witnessed by a Commissioner for Taking Affidavits on March 2, 2021. Although the landlord's adult son could not attend this hearing because their practice as a lawyer required them to be in court on the morning of this hearing, their sworn affidavit explained their circumstances and why they intend to move into the basement suite currently rented to the tenant.

The landlord's adult son noted that they had lived in this rental home since the landlord purchased the property 14 years ago. They noted that they are now 27 years old, have graduated from university and are employed as a full-time lawyer. At the hearing, the landlord explained that their son returned from their studies abroad in 2019, and after completing the required bar admission examinations have been working as a lawyer and residing in the landlord's home since then. The affidavit declared that in or about September 2020, they decided that they needed their own accommodations separate from their parents. Some of the reasons outlined in their affidavit included the following:

1. Their current living arrangements within their parent's home has restricted their social activity and interactions during the COVID-19 pandemic.
2. They have been unable to see their female friend while they remain residing with their parents out of concerns that they could endanger their parent's health by doing so.
3. They plan to marry within the next few years and believed that it was important to establish a separate household from their parents before taking that step.
4. They needed a location where they could gather socially with colleagues, which the present entertainment room would afford if the tenant, who has expressed concerns about noise affecting their basement suite, were not residing in the adjacent suite.
5. They intend to live in the tenant's basement rental suite as it enabled them to remain close to their parents, although living separately.

Their affidavit concluded as follows:

...The current situation is quite difficult for myself as I am unable to secure my independence , but I cannot move elsewhere, as my parents are getting old, and I don't want to live far away from them, where I cannot help them if it becomes necessary.

The landlord testified that they and their spouse are 65 years old and are experiencing health difficulties that make it advisable to have their son living nearby, although in his own living space. They gave sworn testimony that it had always been their intention to use this space for their family once their children had finished school and entered the workforce. They said that the COVID-19 pandemic established different considerations that made it difficult to end the rental of the basement suite earlier than the fall of 2020. They maintained that they no longer needed the rental income and that it made sense for their son to use the entertainment room and live in the basement suite where he could also work and socialize.

At the hearing, the landlord also testified that they realized that if their son does not move into the rental suite that they will be exposed to a significant monetary award that the tenant may claim through section 51(2) of the *Act.*

The tenant stated that they did not know if the landlord's son will truly move into the tenant's rental suite if the tenant were to vacate the premises. They said that the timing of the landlord's initial 2 Month Notice followed directly from the tenant's request for repairs to remedy the noise level that they were experiencing in the pipes above their basement suite. Once it became apparent that the landlord was unwilling to perform the needed repairs to reduce the noises that the tenant was encountering, the landlord issued the 2 Month Notice in October 2020.

Much of this evidence was described in the previous Arbitrator's decision as follows:

...The Tenant stated that the Landlord sent a plumber to inspect, and potentially fix, the ceiling in early October. In the days following that the Tenant realized that the noise was still prevalent. The Tenant again informed the Landlord that the issue was still affecting her. The Tenant stated that the plumber came back again, a couple of times. The Tenant spoke to issues they had scheduling a time for the Landlord to come in with the plumber, and that the Landlord was getting frustrated with her. The Tenant stated that she asked for the Landlord to give her proper formal notice to enter, at least 24 hours ahead of time. The Tenant stated that on October 9, 2020, she gave the Landlord a written and formal list of times that she was available to let the Landlord in to look at the plumbing issue. The Tenant stated that she got both a 24 hours repair notice (notice to enter) and a 2-Month Notice to End Tenancy on October 15, 2020.

The Tenant opines that the Landlord really had no intention to fix the issue, and did not proactively engage with the plumber to have the noisy pipes fixed. The Tenant provided excerpts from different text message conversations she has had with the Landlord.

However, not all of the messages are dated, nor does it appear to be a complete record of what was said. The Tenant also provided videos of the noise, and issues with the ceiling, including the holes in the drywall. ..

During the hearing, the tenant noted that section 32 of the *Act* requires landlords to maintain the rental unit and that the landlord's refusal to meet this statutory obligation prompted the issuance of the 2 Month Notices of October 15, 2020 and that of January 25, 2021, the Notice before me.

The tenant also provided extensive audio, video and written evidence to support her assertions that since issuing the most recent 2 Month Notice, the landlord and their family have been taking actions to disturb the tenant. They noted that on some occasions a radio was left playing in the entertainment room for many hours without anyone in attendance. The tenant also maintained that the landlord has been sending harassing text messages in an effort to make her end her tenancy.

At the hearing, the tenant asked for consideration of a great deal of evidence that pertains most directly to the repairs and rent reduction they were seeking in their first application. I noted that most of this evidence involved those portions of their original application that I have severed from the matters that I am addressing in this decision, the application to cancel the 2 Month Notice.

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 the tenant submitted their application to cancel the 2 Month Notice on February 1, 2021, they were within the time limit for doing so, and the landlord must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

> *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.*

As was the situation when the tenant disputed the 2 Month Notice of October 15, 2020, the tenant has once again alleged that the landlord issued the current 2 Month Notice in response to the tenant's request for repairs to noisy plumbing above the ceiling of their

basement suite. On this basis, the tenant is again alleging that the landlord issued the second 2 Month Notice in bad faith.

Under such circumstances, the burden of proof rests with the landlord to demonstrate that they, in good faith intend to accomplish the stated purpose on the Notice. In this regard, Residential Tenancy Branch Policy Guideline 2A reads in part as follows:

GOOD FAITH

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...

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...

At the January 20201 hearing of the tenant's application to cancel the 2 Month Notice of October 15. 2021, the presiding Arbitrator linked the issuance of that Notice to the tenant's unsuccessful request for repairs that the landlord was unwilling to undertake. However, as was noted earlier, that presiding Arbitrator had little other than the landlord's sworn testimony to rely upon in assessing the extent to which the 2 Month Notice before them was issued in good faith.

I find that the evidence provided by the landlord and, in particular, the sworn affidavit from the landlord's son, provides compelling evidence that the landlord's son does in fact intend to move into the rental unit. While it would have been preferable to have the landlord's son in attendance to speak to the sincerity of their intentions, I find that the sworn and undisputed affidavit from the landlord's son provides an adequate explanation of the circumstances surrounding their intention to move into the basement suite of this family home where the landlord's son currently resides.

As opposed to the situation as it was presented to the previous Arbitrator, I also find that there is additional evidence that the use of the adjacent entertainment room is used by the landlord's son and daughter.. Sounds emanating from that room disturb the tenant

and have given rise to additional tension between the landlord and tenant. Since the nature of the work performed by the landlord's son and daughter in the entertainment room present privacy issues, I also find it reasonable that the landlord issued the 2 Month Notice in good faith so as to enable their son to work and reside in the basement of their home. I also find the affidavit provided by the landlord's son outlined the effect that the COVID-19 pandemic is having on their employment, social and family interactions, which the landlord's son anticipates will be addressed through residing separately in the basement suite in this home. I find that the affidavit presented by the landlord's son and the undisputed sworn testimony provided the landlord and their spouse adequately explained why the landlord's son wanted to remain near their ageing parents who are experiencing some health problems, but in their own section of the house where they can meet people separately,

The tenant relied almost totally on their claim that the timing of the landlord's initial 2 Month Notice coincided with their unsuccessful concerns about the noise they were experiencing with the pipes above their ceiling. While they attempted to raise more recent concerns that have emerged since the issuance of the 2 Month Notice, this only reinforces their assertion that they remain disturbed by the noise entering their suite from other areas of the landlord's family home. At the hearing, the tenant confirmed that they do not have access to the entertainment room on the same basement level of this home. It seems that this room is now being used on a more regular basis by the landlord's family than was apparently the case when the 2 Month Notice of October 15, 2020 was issued. Given that their son and daughter are already using the adjacent entertainment room for their meetings, I find that the landlord has supplied adequate evidence to demonstrate that relocating their son to the tenant's basement suite is a natural extension of the use of the existing portion of the basement their adult children are already using.

Based on the evidence before and on a balance of probabilities I find that the landlord has met their burden of proof in establishing that they issued the 2 Month Notice of January 25, 2021, and that their son does in fact intend to reside in the basement suite currently rented to the tenant. For these reasons, I dismiss the tenant's application to cancel the 2 Month Notice of January 25, 2021.

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 52 of the *Act* reads in part as follows:

> *In order to be effective, a notice to end 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, and*
> *(e) when given by a landlord, be in the approved form.*

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 on March 31, 2021, the effective date identified on the landlord's 2 Month Notice. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the time period required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since this tenancy will remain in place until March 31, 2021, I am also making orders with respect to some of the issues raised by the tenant, so as to ensure that the tenant has quiet enjoyment of the rental premises free from interference and disturbance by the landlord until they vacate this tenancy ends. I mentioned these possible orders during the hearing and the landlord committed that they would abide by these terms if included in this decision.

I hereby order the landlord to refrain from allowing any music to be played in the entertainment room in the basement of this home until March 31, 2021, at which time this tenancy will end.

I hereby order the landlord to refrain from sending any text messages to the tenant during the remainder of this tenancy.

Since this tenancy ends on the basis of the 2 Month Notice and there is undisputed sworn testimony that no compensation has thus far been provided to the tenant pursuant to section 51(1) of the *Act*, the landlord is responsible for compensating the tenant the amount of $950.00, the amount paid by the tenant for monthly rent.

As the tenant has been partially successful in obtaining a monetary award and some orders against the landlord, I allow them to recover their filing fee for one of their applications from the landlord.

I dismiss the remainder of the tenant's application with leave to reapply.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice of January 25, 2021, without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on March 31, 2021 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.

During the remainder of this tenancy, I order the landlord:

- to refrain from allowing any music to be played in the entertainment room in the basement of this home until March 31, 2021, at which time this tenancy will end.; and
- to refrain from sending any text messages to the tenant during the remainder of this tenancy.

I issue a monetary Order in the tenant's favour in the amount of $1,050.00, under the following terms, which allows the tenant their provision of the equivalent of one month's rent pursuant to section 51(1) of the *Act,* and the filing fee for one of their applications.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: March 15, 2021

Residential Tenancy Branch