Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

The tenants applied for an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") pursuant to subsection 49(8)(a) of the *Residential Tenancy Act* ("Act"). In addition, the tenants seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

The tenants and the landlords attended the hearing, conducted by teleconference, on April 1, 2021. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure,* under the Act, were explained to the parties.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Are the tenants entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only pertinent oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain my decision, is reproduced below.

The tenancy began on July 1, 2013 and monthly rent is $1,860. The tenants paid a security deposit in the amount of $837.50. A copy of a written Residential Tenancy Agreement is in evidence.

On December 28, 2020, the landlords served the tenants with the Notice by email and by registered mail; a copy of the Notice was in evidence. No issues of service of the Notice were raised or disputed by the tenants.

The landlords testified – and this is reflected on page two of the Notice – that they want to end the tenancy because the rental unit will be occupied by the landlords' son. The landlords further testified that their son has been looking for a place to live for some time now, and, that they came to an arrangement whereby the son is to purchase a portion of the rental unit. The landlords' son is intending to move in and occupy the rental unit as soon as possible, the property sale documentation is in order, and, lastly, the son's mortgage application was approved.

In support of their testimony, the landlords submitted as evidence a one-page letter on which the son states his intentions to move into the rental unit, along with copies of email correspondence between the son and a mortgage broker; the email correspondence reflects a discussion about the mortgage.

The tenants dispute the Notice, arguing that the landlords issued the Notice in bad faith. As submitted and described in their application for dispute resolution, the tenants argue that the landlords gave the Notice because (1) the landlords want to retaliate against the tenants for not reimbursing the landlords for water leak repair costs from late 2019, and, (2) the landlords actually intend to rent out the rental unit at a higher rent.

In their testimony, the tenants did not refer too much to the higher rent issue. However, they argued that other reasons also gave rise to the landlords' issuing of the Notice. For example, they referred to a noise complaint, or issue, made by another occupant of the building. They also noted that the landlords appeared to take issue with the number of occupants in the rental unit. When the tenants took occupancy of the rental unit seven years ago, it was the husband, the wife, and their child. But families inevitably grow, and the tenants had two more children; the family now numbers five. The rental unit is a two-bedroom unit in a high-rise condominium tower.

The tenants testified that once every year, since 2013, the tenancy agreement was renewed. It became almost a bit of a ritual. The parties would meet, and the tenancy agreement was renewed anew. However, in 2020, the landlords did not attend to renew the tenancy agreement. This raised a rather worrying question in the tenants' minds that perhaps something was amiss.

It is the tenants' contention that, after a water leak issue in December 2019, the landlords decided at some point to end the tenancy due to the costs related to repairing the water leak, and the tenants' refusal to pay for those repairs. They also found it peculiar that, while the landlords did not inspect the rental unit for many years, "all of a sudden" they decided to conduct an inspection of the rental unit.

The tenants referred to an email from one of the landlords which the tenants argued constituted a “very clear threat” and a “direct threat to me and my family.” Allegedly, the water leakage issue is what prompted the email.

They then argued that, but for the eviction freeze put in place by the provincial government in 2020 due to the pandemic, the landlords “could’ve evicted us much, much earlier.” In their final submission, the tenants concluded that it is “very, very clear that the notice [was] issued in bad faith.” Further, they suggested that, “they [the landlords] made an arrangement with their son to have us evicted.”

At this point, I will refer to the email referenced by the tenants. Copies of several emails were in evidence, the earliest dating from October 17, 2019. In the emails, the parties discuss a water leak and the source of that leak. There is also a rather unrelated statement made by the landlord (S.) in which they write as follows, after discussing issues with the leak:

> We are concerned that we have had to deal with a few strata issues and other problems with the unit on your behalf.

There is nothing further in that, or subsequent emails, however, expanding on what those issues or problems were. The overall tone of the email communication appears to be little more than a minor contretemps, and there is certainly nothing, I find, amounting to what the tenants perceive to be a direct threat against them or their family.

Also included in the tenants’ evidence was text message correspondence between the parties spanning a period from December 18, 2019 to January 26, 2020, inclusive, concerning the water leak. There are some photographs of the source of the leak: it is under a sink. It should be noted that the tone of the back and forth communication is, for the most part, cordial.

In an email dated March 15, 2020 from the landlords to the tenants, the landlords ask the tenants to pay $725 for water leak repairs. They also give the tenants thirty days’ notice to inspect the rental unit, and, add that, “We will also be discussing with you the issue of the number of occupants in the apartment.”

The tenants respond to the email a little over two hours later and disagree with having to pay for repairs. Other, unrelated matters are included in the response email. There is no further reference or mention of the concern about the number of occupants.

Finally, in evidence were emails dated from March 2020 about rats and pest control; neither party referred to these during the hearing, so I will not consider them. There is no further email correspondence between the parties, in evidence, after March 2020.

In rebuttal, the landlords rejected the tenants' assertions. They noted that the tenants' suppositions are on matters unrelated to the issuing of the Notice. The landlords explained that the noise and water leak issues "relate to very historic matters that are resolved." In respect of the one-time inspection, the landlord testified that the inspection was done as an insurance company requirement. Otherwise, they explained, they had always respected the tenants' privacy. Finally, the landlord said, "I can understand their frustration [but] there is only one reason for this: our son needs somewhere to live."

Analysis

Section 44(1) of the Act lists fourteen ways in which a landlord or a tenant may end a tenancy. Subsection 44(1)(a)(v) of the Act refers to a landlord's notice to end tenancy for use of property, which is covered in more detail in subsection 49(3) of the Act. This is the specific subsection under which the Notice was issued:

> 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.

For definitional purposes, a "close family member" is defined in section 49(1) of the Act to mean, in relation to an individual landlord, (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The standard of proof in an administrative hearing such as this one is that of 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. However, when a tenant applies to dispute a notice to end a tenancy, the onus shifts to the landlord to prove, on a balance of probabilities, the ground on which the notice to end the tenancy is based and was given.

Prima facie, I find that the landlords have established, and proven, the ground on which the Notice was issued: the landlords' son intends, in good faith, to occupy the rental unit. The son's written statement, along with the copies of the correspondence between the son and a mortgage broker, and the landlords' oral evidence about the mortgage being approved, substantiates the landlords' argument as to why the Notice was given.

Where a tenant disputes a notice to end a tenancy on the basis that the landlord issued the notice in bad faith – such as is the case before me – the landlord is also required to refute that claim, and prove that the notice was issued in good faith.

"Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the Act or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the court held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. And, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In disputes where a tenant argues that the landlord is not acting in good faith, the tenant must substantiate that claim with evidence, beyond a simple assertion. In this case, the tenants argue that the landlords and their son are conspiring to have them evicted. The reasons for the eviction they argue have nothing to do with the son needing a place to live, but rather, are based on issues involving a water leak that occurred over a year ago and which purportedly cost the landlords $725, an issue having to do with a noise complaint or an occupancy concern, and, because the rent is below market rate.

With respect, the tenants' assertions that the landlords issued the Notice in bad faith are not supported by the evidence. The only documentary evidence submitted – various emails and text exchanges from 2019 and early 2020 – does not support the tenants' assertions that the landlords are acting in bad faith or that there is an ulterior motive.

Further, there is no indication in the text or email communication that the landlords (and perhaps their son) are conspiring to evict the tenants for any reason other than that the landlords' intention that their son intends to occupy the rental unit.

The evidence regarding what can only be categorized as a minor water leak, costing less than eight hundred dollars, and which was essentially resolved in early 2020, does not reasonably support an argument that the landlords in December 2020 – a full year later – then decided to end the tenancy.

I am not persuaded by this argument because (1) the issuing of the Notice occurred almost a year after the water leak, (2) the cost of the water leak repair is not significant, and (3) there is a complete absence of any evidence that the landlords sought to evict the tenants for any of the reasons that they advanced in support of their application to cancel the Notice. Nor, as a further point, do I find that a one-time reference to the landlords' concern about the number of occupants in an email from March 2020 supports the argument that the landlords may have wanted to end the tenancy over a matter of too many occupants.

Further, I am far from persuaded by the tenants' claim that the landlords could, or would, have evicted them in 2020 but for the provincial ban on landlords being able to issue notices to end tenancies. It should be noted that the Province partially lifted the eviction ban on July 2, 2020 and that, except for the issuing of a notice to end tenancy for unpaid rent, landlords were otherwise free to end tenancies after July 2, 2020.

There is a no evidence to suggest that the landlords would, or could, have ended the tenancy earlier than when they did for ulterior reasons. There is no evidence of the landlords attempting to end the tenancy immediately after the ban on evictions was partially lifted. No evidence, either oral or documentary, was provided that supports the supposition that the landlords were seeking to evict the tenants at any point throughout 2020 for any reason other than that the landlords' son needed a home. Thus, I am not persuaded by the tenants' argument that the landlords would or could have evicted them earlier in 2020, but for the eviction ban. This unsubstantiated assertion does not, I find, give rise to a persuasive argument that the Notice should be cancelled.

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 tenants' claim that the landlords issued the notice in bad faith is without merit.

To summarize, having carefully considered the arguments of the parties, the tenants' assertions in respect of a lack of good faith are simply not supported by the evidence. Rather, I find that the landlords' testimony, along with documentary evidence, supports a finding that the landlords' son intends in good faith to occupy the rental unit

For these reasons, I must dismiss the tenants' application for an order cancelling the Notice, without leave to reapply.

As the tenants' application is dismissed, I must dismiss the tenants' claim under section 72 of the Act to recover the cost of the application filing fee.

Having dismissed the tenants' application, I must turn to section 55(1) of the Act:

> 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
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> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
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> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this dispute, I have dismissed the tenants' application and have upheld the Notice. Further, I have carefully reviewed the Notice and find that it complies with section 52 of the Act. Therefore, pursuant to section 55(1) of the Act, I grant the landlords an order of possession of the rental unit.

It is of course not lost on me that a family of five (with three children) will likely experience significant disruption in their lives in the coming weeks in finding a new home. However, I am equally mindful that the landlords' son, who also has been searching for a home and who needs a place to live. It is a difficult occasion for all parties involved in this dispute.

For these reasons, then, I exercise my discretion under section 55(3) of the Act and order that the tenancy is to end on Friday, April 30, 2021 at 1 p.m.

The tenants must vacate the rental unit by that date and time, and, an order of possession is issued to the landlords reflecting this. The landlords must serve a copy of the order of possession on the tenants no later than April 28, 2021 (but preferably much earlier) should enforcement of the order be necessary.

On a final note, I would be remiss if I failed to remind the landlords of their obligations under section 51(1) of the Act.

Conclusion

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

I hereby grant the landlords an order of possession, which must be served on the tenants, and which shall go into effect on April 30, 2021 at 1 p.m. If necessary, 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(1) of the Act.

Dated: April 5, 2021

Residential Tenancy Branch