



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FFT

Introduction

On February 22, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 17, 2021, the Tenant amended her Application seeking an Order to comply pursuant to Section 62 of the *Act* and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord the Notice of Hearing package by registered mail on March 10, 2021 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package.

She also advised that she served her evidence to the Landlord by registered mail on March 16, 2021. While she did not confirm with the Landlord if she could listen to this digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure, she sent the Landlord two letters asking her to respond about this digital evidence. The Landlord confirmed that she received the Tenant's evidence, that she received the Tenant's letters requesting confirmation of being able to listen to the digital evidence, and she

stated that she simply chose not to listen to the digital evidence. As the Landlord acknowledged that she received the Tenant's evidence, and as she simply elected not to attempt to listen to the digital, audio evidence even though she had an opportunity to at least try, I am satisfied that the Landlord was sufficiently served with the Tenant's evidence package. As such, I have accepted all of the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenant by posting it to the Tenant's door on March 16, 2021, and the Tenant confirmed receiving this evidence. Based on this undisputed testimony, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that the Tenant's other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Neither party could agree on when the tenancy started, but it was on or around June or July 2007. As well, neither party could agree on the amount of rent that was due per month; however, it was either \$604.00 or \$602.79 per month. They agreed that rent was due on the last day of each month, however. In addition, the Landlord advised that a security deposit of \$197.50 was paid, but the Tenant submitted that a security deposit of \$250.00 was actually paid. A copy of the tenancy agreement was not submitted as documentary evidence.

The Landlord advised that the Notice was served by being posted to the Tenant's door on February 21, 2021 and the Tenant confirmed that she received the Notice on this day. The reason the Landlord served the Notice is because "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)." The effective end date of the tenancy indicated on the Notice was May 1, 2021.

The Landlord advised that the building is 93 years old, that there are major plumbing issues affecting a few of the units in the building, and that this need to be repaired. Since December 2020, she has spent \$5,200.00 patching some of the plumbing issues. She stated that due to these plumbing issues, massive renovations are necessary in her own unit, which will require her to vacate. She cannot afford the cost of these renovations, so she has attempted to obtain a mortgage or a grant.

As her unit is a three-bedroom space that she does not need, and as she cannot afford to pay for the repairs, it is her intention to move out of her unit and into the Tenant's rental unit. As the rental unit is bringing in the least amount of revenue, after she moves in there, she will then re-rent her own unit when it is repaired as it makes the most financial sense for her business.

She stated that since December 2020, she has had tarps and buckets in her unit; however, she did not provide any documentary evidence to support her testimony regarding the submissions about the plumbing issues being the reason for service of the Notice. She then contradictorily stated that the reason for serving the Notice was not because of the plumbing issues, but because of her need to downsize to a one-bedroom unit that is more affordable. As a Landlord, it is her right to move into the rental unit and the reason she specifically wants to move into the rental unit is because it is the quietest, coolest, most eastern facing unit in the building. While many other one-bedroom units in the building have been available for her to move into, this rental unit is the best fit for her health and peaceful quiet enjoyment, and this move makes the most sense for her financially.

The Tenant advised that the Landlord has been vindictive since she successfully challenged the Landlord's illegal rent increase in the past. She stated that since that time, the Landlord has threatened to evict her by any means necessary and has served several notices to end the tenancy, which have all been cancelled. She referenced the audio recordings submitted as evidence to support her position that the Landlord has

stated that she will do whatever it takes to evict the Tenant. She also cited numerous witness statements submitted as documentary evidence to support her allegations that the Landlord is simply acting in bad faith with this eviction. She stated that most of the units in the building are one-bedroom units, and that there have been many opportunities for the Landlord to move into one of those other units as opposed to ending her tenancy. She stated that the Landlord's stories never add up and are not consistent. In addition, she submitted that if the plumbing issue was so severe, the Landlord has had ample opportunity to move into another unit in the building and then start the repairs.

When the Landlord was asked to respond to the Tenant's allegations of the content in the audio recordings, she avoided commenting whether these were true or not. She stated that she does not respect the Tenant and that she is permitted to have her own opinion of people.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenant on February 21, 2021, I have reviewed a copy of the Notice provided to me to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that this is a valid Notice.

In considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

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... 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... 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.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

It is clear that there is animosity between the parties that has developed over the last three or four years, and that has resulted in multiple notices being served and several Dispute Resolution proceedings. While it is not beyond the realm of possibility that both parties may have contributed to the decline in this relationship, I find it important to note that in the audio recordings that were submitted, the Tenant appeared calm and interested in working with the Landlord to resolve any differences between the parties. However, the Landlord was clearly belligerent, combative, and antagonistic. The following excerpts from these recordings further highlight the Landlord's consistent demeanour:

- I will get aggressive with you. I was going to back off and not get aggressive.
- I actually do have family members that want to live here and so I am going to talk to the RTB and get it figured out and you will get your proper notice and we'll play the game but you might start looking for a place to live because this is not working for us. I don't play this game.
- I don't know what I'm doing. I'm tired of my tenants.
- Because I don't like you.
- You might not be the sharpest tack in the drawer.
- Pretty soon we won't have this [unintelligible] apartment building, so start looking for housing while you're at it because you'll need one.

With respect to why the Landlord required possession of the rental unit, when she was asked to elaborate on the details of her submissions regarding the plumbing issues and if she had any documentary evidence to support the need for the repairs, she questioned why she would need to submit evidence to corroborate her testimony. Given that the onus is on the Landlord to justify the reason for serving the Notice, evidence is

crucial in substantiating the legitimacy of her testimony. As there was insufficient evidence provided, I find that this causes me to give little weight to the reliability of the Landlord's submissions.

I find it important to note that the Landlord then changed her position and emphasized that the main reason for ending the tenancy was because she was permitted to move into the rental unit, under the *Act*, as this was her right as the Landlord. In addition, as the Tenant's rent was so low, this would be an opportunity for her to move into the rental unit and subsequently rent her own unit for significantly more money, which would in turn generate more revenue for her business.

I also find it important to note that the Landlord's submissions during the hearing were often random, erratic, and not relevant to why the Notice was served. Her testimony often focussed on how she believed she had acted in a favourable manner with the Tenant in the past, and her belief that the Tenant has not returned that same sentiment during the tenancy.

Based on the Landlord's demeanour and responses, it is evident in my view that the Landlord feels slighted by the Tenant, and her responses, comments, and actions demonstrate that there is a clear pattern of behaviour that supports a conclusion that the Landlord has ulterior motives for attempting to end the tenancy. While the Landlord has provided some reasons for attempting to end the tenancy under the *Act*, I do not find these to be legitimate as it is evident that the Landlord simply wants this relationship to end by any means necessary.

Furthermore, I also note that Policy Guideline 2A states that "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." While the Landlord has provided reasons for wanting to occupy the rental unit, I do not find that she has submitted sufficient documentary evidence, or any medical documentation, for why she must occupy the rental unit specifically as opposed to other comparable units that have become available prior to service of the Notice. I find that her preferences, based on her health and comfort, for wanting to occupy the rental unit specifically are not sufficient to justify ending a tenancy with this Notice.

Moreover, had the issues with plumbing been so significant that needed to be addressed expediently, it does not make sense to me why the Landlord did not move into any of the vacant rental units that were available so that she could have then commenced the necessary repairs to the unit that she currently occupies. I also note that the Landlord did not have any idea of when any of the repairs would start nor did she have any solidified plans in place to fund the repairs. As such, I give very little weight to the reliability of her submissions, or that she could legitimately end the tenancy for this reason using this Notice.

When reviewing the totality of the evidence before me, I do not find that the Landlord's responses or submissions accord with logic or common sense, and I do not find the Landlord's submissions to be credible. As a result, I prefer the Tenant's evidence on the whole. Consequently, I am not satisfied that the Notice was served in good faith, as it is evident that the Landlord's intentions are to end the tenancy out of desperation and frustration, rather than for a legitimate reason. Moreover, the Landlord made it clear several times during the hearing that this Notice was also served because of financial motivations as the Tenant's rent is the lowest in the building. I find that the reasons that the Landlord provided for wanting to end the tenancy are a veiled attempt to get rid of the Tenant that she dislikes, that she has had an acrimonious relationship with, and that pays the least amount of rent. This is also consistent with her comments that if she is not successful in this hearing, she will simply "file again".

Ultimately, I find it more likely than not that the Landlord had a clear, ulterior motive and was not acting in good faith when she served this Notice. Based on the insufficient evidence and the unconvincing testimony of the Landlord, I am not satisfied, on a balance of probabilities, that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of February 21, 2021 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property of February 21, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: April 7, 2021

Residential Tenancy Branch