Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNL, OLC, MNDCT
For the landlord: OPL, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use, issued pursuant to section 49;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, under section 51(2).

The landlord's application pursuant to the Act is for:

- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Rule of Procedure 6.11 states:

> **6.11 Recording prohibited**
> Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

At the outset of the hearing both parties confirmed they understand they must be civil and orderly at all times, only one person can speak at the same time and the hearing cannot be recorded.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant received the Notice on January 25, 2021. The landlord submitted her application on February 16, 2021. A copy of the Notice was submitted into evidence. The effective date is March 25, 2021.

The tenant affirmed he moved out on March 06, 2021 and returned the keys to the landlord on March 08, 2021. The landlord confirmed she received the keys on March 08, 2021.

The application for cancellation of the Notice, an order requiring the landlord to comply with the Act and an order of possession are moot since the tenancy has ended and the tenant has left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant's application for cancellation of the Notice and for an order requiring the landlord to comply with the Act and the landlord's application for an order of possession.

As the tenant moved out before the effective date of the Notice, there was no need for the landlord to apply for dispute resolution.

Accordingly, the landlord must bear the cost of her filing fee.

Preliminary Issue – Service of the Tenant's application

At the outset of the hearing the landlord confirmed receipt of the tenant's application, the evidence and the amendment. The tenant confirmed receipt of the landlord's response evidence. Based on the undisputed testimony, I find that each party was served with the respective application, amendment, and evidence in accordance with sections 88 and 89 of the Act.

Towards the end of the hearing both parties stated they only received part of the evidence from the other party. The tenant submitted evidence to the RTB on five dates and the landlord on three dates: January 30 (tenant, 5 files), February 16, 2021 (tenant, 10 files), April 13 (tenant, 1 file), April 14 (landlord, 12 files), April 15 (tenant, 1 file), April 17 (landlord, 13 files), April 21, 2021 (landlord, 5 files, tenant, 1 file).

When a party is involved in a dispute resolution, arbitrators must ensure that the party was informed of the claims being made against them. This includes sufficient particulars

of the claims being made against them such that they know what evidence they will need to defend themselves or to rebut the claims.

Rules of Procedure 3.13, 3.14 and 3.15 state:

> **3.13 Applicant evidence provided in single package**
> **Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.**
> An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [Expedited Hearings].
>
> **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.**
>
> **3.15 Respondent's evidence provided in single package**
> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. **The respondent's evidence should be served on the other party in a single complete package.**
> **The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**
>
> (emphasis added)

While both parties' evidence was not served in accordance with the timelines provided in the Rules of Procedure, much of the materials are irrelevant to the matter at hand. Furthermore, the parties only raised concerns about the service of evidence towards the end of the hearing, after confirming service at the outset of the hearing. As such, I find little prejudice to the parties or any breach in the principles of natural justice and find that both parties' evidence was sufficiently served in accordance with section 71(2)(c) of the Act.

Issue to be Decided

Is the tenant entitled to a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on November 15, 2020 and the keys were returned on March 08, 2021. Monthly rent was $500.00, due on the first of the month. At the outset of the tenancy the landlord collected a security deposit of $250.00 and returned it on March 08, 2021.

The Notice dated January 25, 2021 indicates the reason to end tenancy is: "The rental unit will be occupied by the landlord or the landlord's spouse" and "The landlord is a family corporation and a person owing voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit".

The tenant is seeking compensation in the amount of $6,000.00 (12 times the monthly rent of $500.00).

The tenant provided testimony about the landlord's belligerent behaviour during the tenancy. I instructed the tenant to provide relevant testimony. The tenant stated "I cannot believe you're performing on this level", laughed at me and said he is recording this hearing. I ordered the tenant to delete the recording and warned the tenant that he must be respectful.

I explained to the tenant that he may be fined if he does not delete the recording of this hearing. Section 95(3) of the Act states:

> Offences and penalties
> 95(3) A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.

The tenant was silent about my order and proceeded with his testimony. The tenant continued to provide testimony about the landlord's behaviour during the tenancy. I instructed the tenant once again to provide relevant testimony. The tenant laughed one more time and said I do not have knowledge of this matter. I warned the tenant once again that he must be respectful.

The landlord affirmed the tenant rented one bedroom in the rental unit and since February 20, 2021 the landlord occupied the rental unit part of the time, as she was moving from her other property to the rental unit. The landlord stated on April 01, 2021 her other property was sold and she has been living in the rental unit full time since April 01, 2021. The landlord plans to continue to live in the rental unit.

The tenant stated he cannot confirm or deny if the landlord has been living in the rental unit and he is not aware of what happened after March 04, 2021.

The tenant affirmed the rental unit is underdoing major renovation and the landlord should have served a four month notice to end tenancy for renovation. The tenant submitted into evidence photographs taken on April 13, 2021 showing renovation work outside the rental unit. The landlord stated the photographs show maintenance work outside the rental unit, the bedroom the tenant occupied has not been renovated and the landlord has been occupying the tenant's bedroom since April 01, 2021.

I explained to the parties that I heard enough testimony and I was ready to render my final binding decision. After about 77 minutes of hearing time I concluded the hearing.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Section 49(3) of the Act 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.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if:

> (a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
>
> (b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the undisputed testimony and the Notice, I find the Notice was served with the purpose of the landlord occupying the rental unit.

The tenant stated he is not aware of what happened after March 04, 2021. The landlord coherently affirmed repeated times that she has been living in the rental unit part of the time since February 20, 2021 and full time since April 01, 2021. The photographs taken on April 13, 2021 do not prove the landlord has not been living in the rental unit, as they show renovation work outside the rental unit. The parties did not present evidence that the landlord cannot occupy the rental unit during the renovation.

Based on both parties' testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord has not been occupying the rental unit since March 26, 2021, the first day after the Notice's effective date. Thus, the tenant is not entitled to the compensation he is seeking.

Compliance Enforcement Unit Referral

Residential Tenancy Branch Policy Guideline 41 states:

> The Residential Tenancy Branch may decide that an administrative penalty should be applied when the evidence shows the respondent has:
> •Contravened a provision of the Legislation or regulations; or
> •Failed to comply with a decision or order of the RTB.

Event though the tenant confirmed at the outset of the hearing that he understands he must be civil and orderly at all times and that he cannot record the hearing, the tenant displayed abusive behaviour during the hearing, laughing at me and insulting me repeatedly, for example saying "I cannot believe you're performing on this level" and that I have no knowledge of this matter. I warned the tenant to be respectful and ordered the tenant to stop recording this hearing. The tenant did not respond to my request to delete the recording.

Because I am concerned that the tenant was abusive and failed to comply with the order to stop recording the hearing and delete the recording, I am sending a copy of this decision to my manager. My manager will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials from the dispute resolution file to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of the dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this decision.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: May 17, 2021

Residential Tenancy Branch