Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPC, FFL

Introduction

The tenant seeks various relief under the *Residential Tenancy Act* ("Act").

A dispute resolution hearing was held, by teleconference, on May 31, 2021 at 9:30 AM and in attendance were the tenant, the tenant's spouse (now separated), the landlord, the landlord's two daughters, and another family member who assisted. One of the landlord's daughters and the other family member provided all of the testimony and submissions in this hearing, and, for brevity and simplicity, I shall usually refer to them collectively as the "landlord."

No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Preliminary Issue: Objection of Tenant to Multiple Party Representation

The tenant's husband objected to the multiple persons representing the landlord. Further, he objected to the names of those persons not being provided in advance of the hearing.

Section 74(4) of the Act states that a "party to a dispute resolution proceeding may be represented by an agent or a lawyer." While the singular nouns "agent" and "lawyer" is used, they may be interpreted as a plural noun (see section 28(3) of the *Interpretation Act,* RSBC 1996, c. 238). Thus, the landlord is entitled to multiple people representing them.

This is reflected in Rule 6.7 of the *Rules of Procedure,* which permits a party to be represented by an agent or a lawyer, and, to be assisted by any other person whose assistance is required in order to make their presentation.

Lastly, Rule 6.8 of the *Rules of Procedure* states that

> The arbitrator may require an agent to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.

In this dispute, I see no reason why, given that the landlord was present, proof of anyone's appointment to represent or assist the landlord is required. Nor is there any procedural basis on which the landlord is required to submit the names of those individuals to either the tenant or the Residential Tenancy Branch. Given this, while the tenant's objection is noted, I make no orders giving effect to that objection.

Issues

1. Is the tenant entitled to an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 49 of the Act?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order of compliance against the landlord, pursuant to section 62 of the Act?
4. Is the tenant entitled to recovery of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

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

The tenancy began in 2017 and monthly rent is $750.00. The tenant paid a security deposit of $340.00. There is no written tenancy agreement in existence, as the terms of the tenancy appeared to be entirely verbal.

On March 8, 2021, the landlord served the Notice on the tenant in-person. A copy of the Notice was submitted into evidence. The Notice was signed on February 28, 2021. The Notice indicated (on page 1) that the effective date of the Notice was May 1, 2021.

I note that the tenant raised the issue of the effective date of the Notice. I would agree with the tenant that the effective date ought to have been May 31, 2021. Pursuant to section 53 of the Act, the date on the Notice is deemed to be changed to the earliest date permitted. In this case, the effective date is changed to May 31, 2021.

Page two of the Notice indicates that the tenancy is being ended because the landlord or the landlord's spouse will occupy the rental unit.

The landlord testified, however, that it is the landlord's daughter who intends to move into the rental unit. The rental unit is a one-bedroom basement suite. The landlord "needs the space for their daughter," submitted the landlord's nephew. Moreover, he argued that "it is a clear-cut notice" and that it is the landlord's intention to "lay the law down." And, to reiterate, "we do need the use of the downstairs unit."

The landlord's daughter testified that they need the one-bedroom rental unit because they work from home, have been working from since the pandemic began, and that they would like to move into the rental unit. They added that a certain modicum of privacy is desired, given the confidential and sensitive nature of their work.

The tenant's advocate (her husband) testified that the Notice was not issued in good faith. They referred me to an audio recording and a copy of a translation of that recording, both of which were submitted into evidence. I must admit that the quality of the translation leaves much to be desired, but the gist of the matter is more than clear.

The file information for the audio file indicates that it was created January 4, 2021. The conversation purportedly occurred on this date. In the recording, the tenant pointed me to statements made by the landlord's wife (or someone with the pronoun "Mrs.") wherein if the tenant agreed to pay a higher amount of rent that the tenant could stay. Relevant excerpts include the statements: "Now I am giving a $50 discount and considered $850. Inform your husband, Either Uncle inform or, not inform, just tell your husband. If the amount suits you, can stay how long you want doesn't matter" and "you can stay, only if you can pay."

The tenant also raised the question of, if the landlord's daughter has been working from home for over a year, why is it that just now they need a place to work, and why the rental unit? "All of this time privacy was not an issue?" he asked. In short, the tenant's husband remarked that "the privacy issue is total B.S."

Both parties provided brief rebuttals, and the tenant briefly testified. Though, I must admit, and with the greatest respect, I had a rather difficult time understanding some of what she said. The daughter who intends to occupy the rental unit explained that they had recently been promoted to an HR advisor role, one which requires discretion and privacy, and, that this is not the same role that she has held for most of the past year.

Analysis

1. Application for Order to Cancel Notice

Section 44(1) of the Act lists fourteen ways in which a party to a tenancy agreement may end a tenancy. Section 44(1)(a)(v) refers to a landlord's notice to end tenancy for use of property, which is covered in more detail in section 49(3) of the Act. This is the specific section under which the Notice was issued, and it reads as follows:

> 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) 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(s) on which the notice to end the tenancy is based.

Prima facie, I find that the landlords have established and proven the ground on which the Notice was issued. Namely, that the daughter intends to occupy the rental unit.

However, where a tenant disputes a notice to end a tenancy on the basis that the landlord issued the notice in bad faith then the landlord is obliged 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 legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia 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, to reiterate, 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 may substantiate that claim with evidence. In this case, the tenants submitted documentary evidence of a conversation between the landlord's wife and the tenant regarding an offer of being able to stay as long as they like if they agreed to pay rent in the amount of $850 (an increase of 13%, not taking into account the rather ridiculous "discount" of $50.00 that formed part of the offer). In response to this claim, the landlord admitted that it was an error, and that they did not intend to raise rent in breach of the amount permitted under the legislation.

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 landlord has not met the onus of proving that they intend, in good faith, to have their daughter occupy the rental unit.

Quite simply, I find the timing of the issuing of the Notice – being issued less than two months after the landlord offered to let the tenant stay as long as they wanted if they agreed to pay significantly higher rent – raises a significant doubt in my mind as to the landlord's true intentions.

Further, I am persuaded by the tenant's argument as to why, only now, is it that the landlord's daughter requires the rental unit as a place to work and live, when this need did not appear to exist at any point since the pandemic began.

For these reasons, I do not find that the landlord issued the Notice in good faith and therefore order that the Notice be cancelled. It is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

On a final note, as my decision hinges largely on the content of a translation of a recording (neither the landlord nor any of his representatives or family objected to the quality of the translation that was provided to me), it is important to note that the *Privacy Act,* RSBC 1996, c. 373 does not factor into my admitting this recording and translation into evidence.

2. Application for Landlord's Compliance

Under the tenant's application for an order of compliance, the following description was provided: "The landlord did not provide any contract/agreement. The landlord did not comply with the tenancy act on when to serve the notice and not in good faith." It was mentioned on a few occasions by the tenant that no written tenancy was ever made.

Section 13(1) of the Act states that "A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004." This was not done.

Accordingly, pursuant to section 62(3) of the Act, which states that an arbitrator "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act," I find it necessary to order the landlord to prepare a written tenancy agreement and provide it to the tenant for signature no later than June 30, 2021.

Further, I order that the landlord must use the Residential Tenancy Agreement form (RTB-1) that is downloadable at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1_chrome.pdf for this purpose. If the landlord is unable to access this download, they may contact the Residential Tenancy Branch for assistance.

The terms of the tenancy agreement must reflect those that are currently in place, and, agreed upon by the parties. Both parties must retain for their records a copy of the completed tenancy agreement for the duration of the tenancy.

3. Claim for Cost of Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in their application, I grant them $100.00 in compensation to cover the cost of the filing fee.

To this end, the tenant may make a one-time deduction of $100.00 from their payment of rent for July 2021.

Conclusion

I HEREBY:

1. cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, effective immediately;

2. order the landlord to prepare, and sign, a written Residential Tenancy Agreement no later than June 30, 2021; and,

3. authorize the tenant to make a deduction of $100.00 from rent for July 2021.

This decision is made on delegated authority under section 9.1(1) of the Act. Dated:

May 31, 2021

Residential Tenancy Branch