Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

The tenant seeks orders (1) to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"), and (2) that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act.

The parties, including a support person for the landlord, attended the hearing on June 8, 2021 at 9:30 AM. No issues of service were raised by the parties, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order under section 62 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 on January 1, 2020. Monthly rent is $1,000 and the tenant paid a $500 security deposit. A written tenancy agreement was in evidence.

On February 27, 2021, the landlord issued the Notice by serving it on the tenant's door. A copy of all four pages of the Notice was submitted into evidence. The Notice indicates that the landlord intends in good faith to occupy the rental unit. The effective date of the Notice – that is, the date on which the tenancy is to end – is May 1, 2021.

It should be noted that the box next to the statement “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).” was checked. However – and this was a defect in the Notice that the tenant spoke to – none of the three circles appearing next to brief sentence fragments indicating whether it was the landlord or their spouse, the child of the landlord or landlord’s spouse, or the father and mother of the landlord or landlord’s spouse, were checked.

After the tenant filed their application for dispute resolution to dispute the Notice, the landlord amended the Notice by checking off the first circle, thus indicating that it was the landlord who intended to occupy the rental unit. This amended Notice was then left in the shared mailbox of the residential property on March 12, 2021.

The landlord testified that they issued the Notice because they intend to use the rental unit as a media room, a rec room, and a craft room. The rental unit is a self-contained one-bedroom and one-bathroom open concept basement suite.

The tenant testified that the omission on the Notice that was served on February 27 was not unintentional, and that she believes the landlord has ulterior motives for issuing the Notice; the landlord is, she alleges, on “a campaign of bad faith.” The tenant also took issue with the validity of the Notice – that is, the omission of which of the three options pertained to the ending of the tenancy – and with the service of the amended Notice by being left in the shared mailbox. According to the tenant, the landlord and the tenant both have access to the mailbox.

The gist of the tenant’s submission as to why they believe the Notice was issued in bad faith is this: the landlord desires a relationship with the tenant that the tenant does not want. There is a level of desired closeness and unwelcome intrusiveness that has continued over many months that the tenant is no longer willing to tolerate. Indeed, the tenant spoke of the landlord’s inappropriate behavior, including twice poking or touching her in a highly offensive and sexual manner. Despite the landlord’s continued attempts to have some sort of relationship beyond that of a landlord and tenant, the tenant does not want to spend time with her. “I don’t owe [the landlord] this level of closeness,” the tenant explained.

And, if the landlord “desperately” needed the rental unit for her recreation and crafts room, the tenant argued, then why would the landlord rent out a space in the landlord’s house to another occupant (referred to as “the lodger” by the parties). The landlord already has an existing craft and sewing room, the tenant submitted.

In summary, the tenant argued that the landlord – who has been unable to develop some sort of close relationship with the tenant – now simply wants to rent out the rental unit to the lodger at a higher rent. Apparently, not long before or around the time the tenancy started, the landlord remarked to the tenant that while the rental unit was worth $1,400, she would rent it out to her for $1,000. The tenant closed by saying that "all I want is to pay my rent and live in peace," and, that "all I want is my privacy."

In rebuttal, the landlord testified that they always have renters and have long had boarders. And, the landlord reiterated that the Notice was issued because "I'm looking for the use of [the] property." As for the amendment to the Notice, the landlord explained that they called the Residential Tenancy Branch and were told to make the small correction to the Notice and provide an updated copy to the tenant, which they did.

At approximately 9:58 AM in the hearing, with the parties' testimony and submissions about the Notice having concluded, there was time for me to hear the tenant's application for an order under section 62 of the Act. I briefly explained the broad remedy provided by this section of the Act and asked the tenant to provide a concise request for what it was that they sought.

The tenant asked for three remedies, of sorts: (1) that the Notice be cancelled, (2) that there be an acknowledgement of tenant compensation equal to twelve months' worth of rent, and (3) a request for a lock change authorization.

I explained that the first request would be dealt with as a matter of course. As for the second request, the tenant refers to section 51 of the Act. As also explained, this section of the Act only applies if I upheld the Notice and it was discovered that the landlord did not end up occupying the rental unit as stated in the Notice. There is, then, no remedy to be provided under this section, as it simply does not apply at present.

As for the request for a lock change, the tenant explained that the rental unit has two entries: one exterior door and one interior door. Both doors have locks, though the interior door lock is only accessible from the landlord's side of the property. The tenant testified that the landlord has repeatedly entered the rental unit without her permission, mainly (based on the documentary evidence submitted, specifically in the way of text messages) to retrieve things out of the tenant's refrigerator. There are also some safety concerns with the landlord's lodger.

The landlord spoke briefly about the tenant's previous requests for a lock change but indicated that they were "more than willing" to change the locks.

Analysis

1. Dispute of Notice

Where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 44(1)(a)(v) of the Act refers to a landlord's notice to end tenancy for use of property, covered in more detail in section 49(3) of the Act. This section states that "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, either (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

As noted above, the standard of proof in an administrative dispute hearing such as this 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 they intend to occupy the rental unit for the purpose of using it as a multi-purpose room.

At this point, it is worth noting that while the specific person who would be occupying the rental unit was not checked off (the three circles), the Notice did, nevertheless, indicate the reason for the issuing of the Notice: that the landlord or a close family member of the landlord intends to occupy the rental unit. The omission of a specific circle being checked off is not, I find, a fatal error that invalidates the Notice. As such, I find that the Notice is valid. The specificity called for in the Notice, while perhaps helpful, is not a requirement under section 49(3) of the Act.

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 – 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 meaning a party is acting honestly when doing what they say they are going to do or are required to do. 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) it was 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 purpose stated on the notice. When the issue of an ulterior motive is raised, the onus is on the landlord to prove that they are acting in good faith (*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, including oral testimony. In this case, the tenant testified that the landlord’s ulterior motive is driven by the tenant’s refusal to have a close relationship with the landlord. And, it appears, a possibility that the landlord intends to rent out the rental unit for a higher rent. The tenant testified about the landlord’s highly inappropriate behavior, suggesting that the landlord seeks a type of relationship going beyond a normal tenant-landlord relationship.

Where the good faith intent of a landlord is called into question or is raised, as it was in this dispute, the onus shifts to the landlord to prove that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find it significant, and most telling, that the landlord did not address or refute any of the tenant’s claims. At no point during the hearing did the landlord mention, or object to, the various alleged vagina-grabbing or poking incidents about which the tenant testified (in rather alarming detail, I might add). Rather, the landlord simply iterated, and reiterated, that they require the rental unit for their use. The landlord’s notable silence on these claims is significant, and such silence leads me to the conclusion that the landlord issued the Notice for one or more reasons unrelated to the reason stated on the Notice.

In summary, then, taking into careful consideration all of 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 establishing that they intend to occupy the rental unit, in good faith, at the end of the tenancy

Accordingly, I order that the Notice is cancelled, effective immediately. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in compliance with the Act.

2. Application for Lock Change

Section 31(3) of the Act states that a "tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change."

It appears that some of the landlord's entries into the rental unit were to retrieve various items from the refrigerator. The text messages reflect the landlord's reasons. Unfortunately, the landlord's entrances appeared to be "supported" by her erroneous perception of a chummy relationship with the tenant that simply did not exist. The tenant tolerated the landlord's entries, but only to a point. For these reasons, then, I am not satisfied on the evidence before me, that there is a basis for changing the locks or other means of access, because I find that the landlord was acting in a mistaken belief that it was acceptable to enter the rental unit. Thus, I decline to grant the tenant a lock change authorization under section 31(3) of the Act.

That said, the landlord must promptly familiarize herself, and comply, with section 29 of the Act. Texting a tenant to ask, "Hey I need cream is it okay if I go down and get some from your fridge" is conduct unbecoming a landlord. The landlord must respect the tenant's home and privacy. Any future breaches by the landlord of the tenant's rights under Division 4 of the Act may give rise to a claim for compensation.

Conclusion

I hereby cancel the Notice, effective immediately. The tenancy shall continue until it is ended in accordance and compliance with the Act.

I dismiss the tenant's claim for a lock change, without leave to reapply.

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

Dated: June 9, 2021

Residential Tenancy Branch