Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Landlords: OPL, FFL
Tenants: CNL, LRE, MNDCT, OLC, CNR, CNC, LAT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords filed an application for each of the two tenancies, and requested the following orders:

- an Order of Possession for non-payment of rent pursuant to section 55;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants filed two applications pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlords' 2 Month Notice to End Tenancy for landlord's own use (the 2 Month Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to change the locks to the rental unit pursuant to section 70.

The applications in this dispute pertain to two different rent units in a home owned by the same landlords. KS and CB are tenants who rent the upper portion of the home, while tenants ES and JD rent the lower portion of the home. The tenants filed two

applications for dispute resolution pertaining to both tenancies within the same disputes, while the landlords filed two cross applications, one for each tenancy. All three parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the outset of the hearing, the landlords confirmed that they wished to cancel the 10 Day Notices to End Tenancy for Unpaid Rent, and the 1 Month Notices to End Tenancy for Cause that was served on the tenants. The landlords confirmed that they still wished to proceed with the hearing in relation to the 2 Month Notices for Landlord's Use. Accordingly, the 10 Day Notices dated June 4, 2021, and the 1 Month Notices dated April 24, 2021 are cancelled. These Notices are of no force or effect.

The tenants confirmed receipt of the landlords' 2 Month Notice dated March 5, 2021. Accordingly, I find the tenants duly served with the landlords' 2 Month Notice.

Preliminary Issue – Multiple Applicants, Small Claims Limit, and Unrelated Claims

In review of the applications before me, I note the following preliminary issues that need to be addressed.

As stated above, there are two rental units in the home. The tenants KS and CB reside in the upper rental unit, while ES and JD rent the lower portion of the home. Rather than each applicant filing their own application for dispute resolution pertaining to their specific tenancies, the applicants filed together as one party seeking the above orders against the landlords. The tenants filed two applications using this method. This is not in keeping with the Residential Tenancy Branch practices. Rule of Procedure 2.10 (Joining Applications) allows for multiple *separate* applications to be heard at the same time. However, joining applications is not something that is available to applicants as of right. A joiner must be applied for.

In this case, the applicants failed to make such an application to join separate applications, and instead circumvented the joiner process by filing two applications on behalf of all tenants.

I also note that the compensation sought by the tenants in their application exceed the small claims limit, which is currently $35,000.00. As noted in Residential Tenancy Policy Guideline #27, "Section 58(2) of the RTA and 51(2) of the MHPTA provide that the

director can decline to resolve disputes for monetary claims that exceed the limit set out in the *Small Claims Act.*

If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction."

Lastly, Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The hearing started at 11:00 am, and ended at 1:00 p.m. I note that the priority claim relates to the 2 Month Notices to End Tenancy, which affects all parties in the dispute. In consideration of the preliminary issues raised above, and as the time allotted was insufficient to allow the tenants' other claims to be heard along with the dispute about the 2 Month Notice, I exercise my discretion to dismiss the portions of the tenants' applications unrelated to the 2 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Preliminary Issue: Service of Evidence and Adjournment of Hearing

The tenants testified that they had attempted to serve the landlords through different methods, including registered mail, but that the address provided to them was not valid according to the postal service. The tenants testified that they attempted to email their packages to the landlords, which the landlords had refused. The tenants also testified that they wished to submit affidavits for two material witnesses, but were unable to obtain these affidavits on time to serve the landlords in accordance with the required service provisions.

The tenants requested an adjournment of the hearing in order to re-serve the landlords with their evidentiary materials, as well as obtain the affidavits for the hearing. The tenants testified that they did not have the assistance of legal counsel, who was not available for the scheduled hearing. The tenants felt that an adjournment was necessary to obtain further assistance from legal counsel. The landlords were opposed to an adjournment as they felt that the tenants had other options to serve the landlords, such as through personal service. The landlords testified that the matter has been outstanding for some time, and that any further delay would be prejudicial to them. The tenants responded that they were unable to drive due to their disability, and attempted to serve the landlords through other acceptable methods, which was refused.

After discussing the matter with both parties, the landlords confirmed that they did receive the materials that were sent to them by email, and that they wished to proceed with the hearing as scheduled. The only documents not received were the affidavits, which the tenants had yet to obtain and serve on the landlords. The tenants requested an adjournment in order to obtain and serve these affidavits.

In deciding whether the tenants' adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
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> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

After discussing the matter with both parties, the tenants testified that they believed that one week would be sufficient for them to obtain, submit, and serve the landlords with the affidavits. Considering the fact that an adjournment would likely result in a lengthy delay of this matter, and considering the fact that the this matter pertains to a Notice to End Tenancy where the effective date has passed, I find that an adjournment is not only not necessary, but would greatly prejudice the landlords. As I accept the tenants' testimony that they would be able to obtain the affidavits within one week from the hearing date, I allowed the tenants until July 12, 2021 to obtain, submit, and serve the landlords with the two affidavits. The landlords confirmed the email that the tenants may use for service of the affidavits, which is noted on the cover of this decision. The tenants were instructed that they must submit these affidavits and serve the landlords by way of that email address on or before July 12, 2021 for the affidavits to be considered.

After canvassing the issue with the landlords, the landlords testified that they were content to confirm service of the tenants' evidentiary materials that have been submitted and served by the tenants to the landlords by email. The landlords also confirmed that they wished to proceed with the hearing as scheduled, and did not require any more time to submit further evidentiary materials for consideration.

While I am sympathetic to the tenants' situation, I find that the above remedy is fair, and would provide the tenants with ample opportunity to submit the affidavits for the hearing, while balancing the landlords' right to have their matter heard and decided in a timely manner. I find that the tenants had several months to prepare for this hearing, and the tenants failed to establish why their legal counsel or representation was unable to attend this scheduled hearing by telephone, or why they were unable to find alternative representation or assistance. I find that the tenants had demonstrated that they had sufficient knowledge of hearing and dispute resolution process to proceed without further assistance, and as this matter pertains to a notice to end tenancy, I find the landlords would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter past July 12, 2021.

The request for an adjournment was not granted. The hearing proceeded as scheduled to deal with the landlords' 2 Month Notices. Both parties were informed that I would not render a decision until after July 12, 2021 to ensure that the tenants had time to obtain, upload, and serve the landlords with the affidavits for consideration. As noted earlier, any further delays would be prejudicial to the landlords, and I informed both parties that no further extensions or exceptions would be granted.

Both parties confirmed receipt of each other's applications for dispute resolution ("Applications") and evidence packages, and that they were ready to proceed with the hearing pertaining to the 2 Month Notice In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants duly served with the each other's Applications and evidence for the hearing, with the exception of the affidavits.

On July 12, 2021, the tenants submitted a document to the RTB addressed to myself stating that despite their attempts to obtain the affidavits, they were unsuccessful in doing so. The tenants state that KS was able to contact one of the neighbours via social media, but the tenants felt that the neighbour was "uncomfortable getting involved in the process". CB spoke to the other neighbour, and had difficulty due to a language barrier. The tenants note that "as soon as signing something was mentioned, he too was apprehensive about getting involved".

The tenants expressed, in their correspondence, that they believe having legal representation would have affected their chances of success in obtaining these affidavits. The tenants believe that the two parties were concerned about their identities and statements made public, and specifically the landlords.

In lieu of these affidavits, the tenants wished to enter into evidence, the statement made by CC to KS, as overhead by ES.

The tenants also note that they did receive further evidence served on them by the landlords, which was submitted on July 12, 2021 as well.

As noted on the hearing date, I had allowed the extension for submission of late evidence only in relation to the affidavits to be obtained, uploaded, and served for the purposes of this hearing. I did not allow any other exceptions in light of this fact, and the fact that the matter was heard on July 5, 2021, when all parties were given ample time and opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Despite the tenants' concerns and belief that legal representation would result in a different outcome, I am not satisfied that the tenants' had provided sufficient evidence to support this belief.

Although the landlords had made further written submissions for this hearing, as noted above, I had given all parties ample opportunity to present their evidence and make their arguments prior to, and on the hearing date. The only exception was for the affidavits. I do not find that any further delay or extensions to be necessary or justified.

Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. These rules ensure that a respondent is given the opportunity to respond if they chose to do so. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I will not consider any late evidence that was submitted after July 5, 2021, nor will I grant any further extensions for the submission of evidence.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to recover the filing fee for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me, and my findings around them are set out below.

ES and JD have been residing in the lower suite since July 19, 2017, and are currently on a month-to-month tenancy. The tenants pay $876.00 in monthly rent, payable on the eighteen day of the month. No security deposit was collected for this tenancy.

KS and CB rent the upper suite for $1,325.00 per month, payable on the first of the month. The landlords collected a security deposit in the amount of $600.00, and a pet damage deposit in the amount of $500.00, which the landlords still hold. The tenants moved in on May 15, 2020, and are currently on a month-to-month tenancy.

Both the upper and lower tenants were each served with a 2 Month Notice on March 5, 2020 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlords provided the following background for why they had decided to issue the 2 Month Notices. The landlords owned another home, where they resided with their adult son CC. The landlords listed the home for sale, and the home was sold three days later. The landlords submitted a Contract of Purchase and Sale dated February 22, 2021. The landlords testified that they had served the 2 Month Notice on the tenants on March 5, 2021, with the intention to move into the rental home. The tenants disputed the 2 Month Notices, and as the new owners took legal possession of the home on May 15, 2021, the landlords have moved to a temporary residence which they are currently renting as they await a decision for this hearing.

The landlords provided documentation to support that the home was sold, and also documentation to support that they have moved, including the cancellation of their home insurance effective May 15, 2021, utilities, and documentation to show that they have forwarded their mail. The landlords testified that they had to find temporary housing as they were unable to move into the rental home as planned. The landlords testified that they had purchased the rental home in 2017 with the intention to retire there, and reside with their son who would be around to help. The landlords' son CC testified in the hearing that he had a significant amount of debt, and this was one of the factors that influenced the landlords' decision to sell the other home, which was valued a lot higher than the rental home, and move into the rental home. The landlords testified that the rental home was on an acre of property, which would allow the landlords to plant more fruit trees, and add additions such as a garage. BC and CC are carpenters. The landlords submitted a detailed, written statement in their evidentiary materials explaining the timeline of events, and their intentions.

The landlords do not dispute the fact that they plan on performing repairs and renovations to the home, but due to their current financial situation, and the cost of lumber, the landlords testified that this is a long-term plan, and they plan to occupy the home first. The landlords testified that there were many breaches by the tenants, including allowing an unauthorized number of pets in the rental unit, and attempting to run a dog day care business out of the home. The landlords wrote that they feel that the tenants KS and CB "misrepresented themselves during the interview process" and gave the impression that CB was handy and "could fix anything" and that they were "totally self-sufficient". The landlords wrote that they had informed the tenants that the home was "as-is". The landlords also noted in their written submissions that the tenant ES would send them intimidating and threatening text messages throughout the tenancy.

The landlords highlighted other grievances such as requests to update the flooring, tv, and internet, purchase fire extinguishers, and perform other repairs despite the "as-is agreement". The landlords stated that they feel KS "has been dishonest in her dealings with us". The landlords wrote that after speaking to their financial advisor, they decided to take advantage of the upward trend in the market and sell their home, and move into the rental house as it "has a smaller mortgage and less expenses".

The tenants dispute the good faith of the landlords in the issuance of the 2 Month Notice. The tenants believe that the landlords intend to demolish or renovate the home, rather than occupy it. The tenants testified that they have made numerous requests for the landlords to repair the home, which have been ignored. The tenants do not believe the home is in a condition that the landlords would want to live in. ES testified in the hearing that he had overheard a conversation between the landlords' son and a neighbour that the landlords stated that "we're going to tear the whole place down".

KS testified in the hearing that when they entered into the tenancy, the landlords made no reference to the fact that this would not be a long-term rental. KS testified that they were "bamboozled" as they had planned to live there long-term, and then the landlords served them with a 2 Month Notice.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence

raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.

Residential Tenancy Policy Guideline 2A states the following about the good faith requirement:

B. GOOD FAITH

In Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. 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 (section 32(1)).

In review of the testimony and evidentiary materials before me, I find that the tenants have raised doubt as to the true intentions and motives of the landlords in ending the tenancies. As the tenants have raised doubt as to the true intent of the landlords in issuing the 2 Month Notice, the burden shifts to the landlords to establish that they do not have any other motive for ending this tenancy.

I find that the landlords made reference several times in their own testimony and written submissions that the rental units were rented “as is” to the tenants. It is undisputed that both the upper and lower tenants have made requests during their tenancies for the landlords to perform repairs, which the landlords deemed to exceed their obligations. Although I accept the fact that the home is older, and regardless of the disclaimer that the home was rented “as is”, the landlords are still bound by the *Act* to fulfill their

obligations to repair and maintain a home as set out in section 32 of the *Act* as set out below:

Landlord and tenant obligations to repair and maintain

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

As an application for repairs is not before me, I cannot make a finding on the merits of the tenants' requests for repairs. However, I find that the landlords were clearly frustrated by the frequent repair requests by the tenants, their "mispresentation" of how handy they were and the repairs that the tenants would complete themselves, as well as the various "breaches" the landlords highlighted in the hearing and their statement. The landlords relied on the tenants' assurances that they "could fix anything" and that they were "totally self-sufficient". The landlords also testified to issues they had dealing with the tenants and their threatening behaviour, as well as several "breaches" that the landlords felt were material in nature.

Although I find that the landlords did provide evidence to support that they did indeed sell their home, and are currently living in temporary accommodation, I find that the tenants have raised considerable doubt as to the true intent and motivations behind ending the two tenancies.

I find that the testimony and evidence submitted by both parties during the hearing raised questions about the landlords' good faith. I find that the landlords, themselves, had provided a lengthy list of issues they had with both tenancies, including what the landlords deem to be unreasonable requests for repairs despite the fact that the home

was rented “as is”, the misrepresentation of the tenants as handy and self-sufficient, the multiple breaches of the tenancy agreement, and the deterioration of the landlord/tenant relationship for both tenancies. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the reasons highlighted here are not the true motivations behind the issuance of the 2 Month Notices.

Accordingly, I dismiss the landlords’ applications without leave to reapply. I allow the tenants’ application to cancel the 2 Month Notices. The landlords’ 2 Month Notices, dated March 5, 2021, are hereby cancelled and are of no force and effect. Both tenancies are to continue until ended in accordance with the *Act*.

Conclusion

As the landlords confirmed in the hearing that they were withdrawing the 10 Day and 1 Month Notices, these Notices are of no force or effect. Accordingly, the 10 Day Notices dated June 4, 2021, and the 1 Month Notices dated April 24, 2021 are cancelled.

I dismiss the tenants’ claims unrelated to the 2 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

I dismiss the landlords’ applications without leave to reapply.

I allow the tenants’ application to cancel the 2 Month Notices. The landlords’ 2 Month Notices, dated March 5, 2021, are hereby cancelled and are of no force and effect. Both tenancies are to continue 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: July 13, 2021

Residential Tenancy Branch