Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

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- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants IDI and BEI attended the hearing. Landlord JD and his wife ("**MD**") attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Identity of Parties

The tenants named several individuals as parties on the application who were not parties to the tenancy agreement. Applicants MS and PS are the IDI and BEI's daughters. They are not named on the tenancy agreement but are listed as "other occupants" on IDI and BEI's Residential Rental Application (made prior to the tenancy agreement). As such, I find that they are not properly named as parties to this application.

Similarly, respondent AD is not named as a party on the tenancy agreement. AD is JD's father and acted as JD's agent during the tenancy, handling day to day management of the rental unit. AD's name is listed on the tenancy agreement under the "Address for Service of Landlord" section. This section provides JD's mailing address and phone number for service, and lists AD's phone number as an "other phone number", with his name beside it. The Notice lists JD as the sole landlord. Based on the foregoing, I find that AD is JD's agent, and not properly named as a landlord on this application.

I order that the application be amended to remove MS, PS, and AD as parties.

For the balance of this decision, I will refer to IDI and BEI as "the tenants" and JD as "the landlord".

Preliminary Issue - Service of Documents

The tenants testified they attempted to serve the landlord with the notice of dispute resolution proceeding package and supporting evidence via registered mail, but they inadvertently put the incorrect postal code on the package, and it was not able to be delivered as a result. IDI testified that he emailed these documents to the landlord on April 16, 2021. The landlords acknowledged receiving them. Accordingly, pursuant to section 71 of the Act, I deem that these documents have been served for the purposes of the Rules of Procedure.

The landlord testified he served the tenants with his documentary evidence via two separate emails. The first on July 8, 2021 and the second on Jul 10, 2021. IDI testified that he received the July 8, 2021 email but did not receive the July 10, 2021 email, as his cell phone broke on July 9, 2021, causing him to be unable to check his personal email. Email is not a permitted form of service under the Act. If an email address is provided as an address for service, then service by email is permitted by section 43 of *Residential Tenancy Act Regulation.* The tenants did not provide their email address for service. As such, I deem the documents attached to July 8, 2021 email to have been served, as the tenants acknowledged receiving them, but I do not deem that those documents attached to the July 10, 2021 email have been served, as the tenants stated they did not receive them.

Accordingly, the documents which were attached to the July 10, 2021 email are excluded from evidence. The landlord was permitted to give verbal testimony as to their contents.

Issues to be Decided

Are the tenants entitled to:

1) an order cancelling the Notice; and
2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting December 15, 2014. Monthly rent is $1,312.46 and is payable on the first of each month. The tenants paid the landlord a security deposit of $600 and a pet damage deposit of $600. The landlord still retains these deposits. The rental unit is the upper unit of a single detached home. The basement unit is rented out by other tenants who are not parties to this application.

On March 21, 2021, the landlord personally served the tenants with the Notice. The Notice specified an effective date of May 31, 2021 and listed the reason for ending the tenancy as “the rental unit will be occupied by the landlord or the landlords’ close family member (parent, spouse or child or the parent or child of that individuals spouse).” The landlord indicated that the mother or father of the landlord or landlord spouse will occupy the unit.

At the hearing the landlord testified that his mother-in-law (MD’s mother) would be moving into the rental unit. He provided a notarized letter from his mother-in-law in which she wrote:

> It is my full intent to occupy the upper unit at [rental unit] which is owned by my daughter [MD] and her husband [JD].
>
> My husband and I decided to start the process of separation, and he moved out of our home in the summer of 2019. In July of 2020, we were both having financial complications and I agreed to let him move back into the house temporarily to lessen each of our costs.
>
> Unfortunately, the situation hasn't been working out, so [JD and MD] offered one of us to move into the [rental unit]. We don't have the financial means to pay for two separate living spaces.
>
> The dispute has delayed my move into the suite by several months, and has caused a lot of anxiety and uncertainty for me. As my husband is now refusing to move out of our home, I would like to leave as soon as possible as my mental and emotional health are suffering.
>
> As soon as the existing tenants move out, I have full intentions to move in. This delay has caused me a great deal of hardship in what is already a difficult situation for my whole family.

The landlord testified that the rental unit was selected as the destination for his mother-in-law for multiple reasons. The rental unit is larger and better appointed than the basement suite. He testified that his mother-in-law needs a larger unit to live in because she intends to have her grandchildren over for sleep overs and needs the space. Additionally, the basement unit is currently rented out pursuant to a fixed term tenancy agreement ending in 2022 (a copy of which was entered into evidence), meaning that the landlord is unable to end the tenancy until then.

The landlord testified that he owns a second rental property, but that it is further away than the rental unit from where his mother-in-law current lives. He testified that the rental unit is closer to his mother in law’s doctor and to where members of her social circle live. Additionally, he testified that the other rental unit is subject to a fixed term lease as well and is rented out at a monthly rent higher than that of the rental unit. He

testified that his mother-in-law would not be paying any rent and having her live in the rental unit is the least detrimental arrangement to his finances.

The landlord testified that, for all the forgoing reasons, the rental unit was selected as the destination for his mother-in-law. He denied that there were any reasons other than those set out above for issuing the Notice.

The tenants argued that the Notice was not issued so as to allow the landlord's mother-in-law to move into the rental unit. Rather, they argued that it was issued due to an ongoing conflict they have with the landlord regarding the utilities bill.

IDI testified that every winter the electrical bill increases as much as 70% (the tenants pay 50% of the residential property's electrical bill). He testified that this is due to the furnace not adequately heating the basement suite (even when the thermostat is set to 25 or 27 degrees) and the basement suite occupant is required to run space heaters in every room to stay warm.

IDI testified that the tenants have never made an application to the Residential Tenancy Branch regarding this issue. He testified that he has brought it up verbally with AD on more than one occasion. IDI testified that AD sent him an email on March 7, 2021, which IDI claimed was in reference to the utilities issue. It reads:

> Thank you for your reply. As your profession is "property manager," you are well aware that there are a lot of rental vacancies available in the lower mainland. Please do me a favor, if you are not happy, start looking elsewhere, as it's best for the both of us.
>
> By the way, there is nothing wrong with your English. As for lack of compassion, you forgot that when you were stuck with your car in front of the house, I pulled your vehicle out with my pickup. The previous tenant [redacted] had reported to me numerous times that you would walk in unannounced in the basement suite to shut off all the lights. On one incident you walked into the bedroom to shut off the lights, while his wife was getting dressed. By "law," I should have had you evicted, but I gave you a second chance.

Neither party provided any testimony as to the events detailed in the second part of the email or suggested that they formed any basis for the issuance of the Notice. The tenants did not provide any emails sent by them which preceded this email.

In addition to alleging that the reason for ending the tenancy was due to the dispute regarding the utilities, the tenants disputed that the landlord's mother-in-law was going to move into the rental unit once they left. They argued that the mother in law's letter only represented her intentions and was not a surety that she would act as indicated. IDI testified that the market rent for a three-bedroom unit in the area was over $2,000 and speculated that the landlords intended to re-rent the rental unit for a substantially

higher rent once the tenants vacated. The landlord denied this and reiterated that the only reason the tenancy was ended was so as to allow his mother-in-law to move it.

Analysis

Section 49(3) of the Act states:

> **Landlord's notice: landlord's use of property**
> (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 49(1) of the Act defines “close family member”:

> **"close family member"** means, in relation to an individual,
> (a) the individual's parent, spouse or child, or
> (b) the parent or child of that individual's spouse;

I find that the landlord’s mother-in-law is a close family member as defined by the Act, as she is the landlord’s wife (MD’s) mother. As such, I must determine if the landlord’s mother-in-law intends in good faith to occupy the rental unit.

Policy Guideline 2A considers the meaning of “good faith”. It states:

> 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.
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> 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. […]
>
> If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.
> […]
> If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
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> The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive

I find that the landlord acted in good faith when issuing the Notice, and that the landlord's mother-in-law intends in good faith to occupy the rental unit. I find the basis for wanting to move into the rental unit set out in her letter to be a reasonable one. I accept these reasons as true. They were corroborated by the landlord and MD during their testimony. I found their testimony regarding the rift between MD's mother and father to be credible; the stress, pain, and frustration was evident in their voices when giving their testimony.

I accept that there may be an ongoing dispute regarding the utilities bill in the rental unit. However, it does not seem to have arisen to the point where the landlord would take such a drastic step as to end the tenancy on fraudulent purposes, risking a substantial penalty in the process.

I accept that AD told to IDI in a March 7, 2021 email that if he is not happy, he can start looking for a new place to rent. However, I have not been provided with the context for this email. I do not know the communication that preceded it (it seems to have been written as a reply to an email of IDI email, which itself was a reply to AD's email). I cannot assess the severity of the dispute between IDI and AD without such context. Such an assessment is important, as a relatively minor dispute (from the landlord's perspective) would not give rise to a Notice failing to be issued in good faith.

During his testimony, the landlord minimized the extent of the dispute. He noted that electrical costs are likely to rise during the winter, especially if the tenants' daughters are living with them, and as the pandemic has caused people to stay home more than normal. While I make no findings as to the correctness of the landlord's position, the fact that he is dismissive of the issue suggests that he does not think it a serious problem he must address. This would suggest that it was not a factor when issuing the Notice. Accordingly, I do not find that the Notice was issued so as to avoid having to address the heating issue.

I find that the landlord and his mother reasonably selected the rental unit as the destination for her move. I accept that the basement unit and the other rental property are occupied with tenants pursuant to fixed term tenancies (which cannot be ended by a Two Month Notice to End Tenancy for Landlord's Use) and that the rental unit is situated in a more convenient location for the landlord's mother-in-law than the other rental property.

I find that these are legitimate criteria to apply when selecting which rental unit a landlord will use for their own purposes. The mere fact that another rental unit could have been selected is not sufficient to show that a Notice was not issued in good faith (as if this were the case, all tenants of a particular landlord could band together to avoid having their tenancy to end. Such an outcome would not be reasonable.)

Finally, I do not find that the landlord intends to re-rent the rental unit at a higher rate. As stated above, I find the reasons for the mother-in-law moving into the rental unit to be credible. I accept the tenants' point that such an outcome is not guaranteed. However, the landlord need only satisfy me on a balance of probabilities that such an outcome will occur (that is, that it is more likely than not to happen). I find the landlord has done this. I find that the Notice was issued in good faith for this reason.

As such, I find the Notice was validly issued and I dismiss the tenants' application to cancel it, without leave to reapply.

Section 55 of the Act states:

> **Order of possession for the landlord**
> **55**(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the Notice meets the section 52 form and content requirements.

As such, per section 55(1) of the Act, I grant the landlord an order of possession effective August 31, 2021 at 1:00 pm.

As the landlord has been successful in the application, I decline to order that they reimburse the tenant their filing fee.

Conclusion

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

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by August 31, 2021 at 1:00 pm.

I order that the landlord serve the tenants with a coy of this decision and attached order of possession as soon as possible after receiving it from the RTB.

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 28, 2021

Residential Tenancy Branch