Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, AAT, PSF, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- more time to apply to cancel the eviction notice;
- an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use dated May 31, 2021 ("Two Month Notice");
- an Order to allow access for the Tenant or their guests;
- an Order to provide services or facilities required by the tenancy agreement or law; and
- recovery the $100.00 cost of his Application filing fee.

The Tenant, the Landlord, and an advocate for the Landlord, C.A. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said he served the Landlord with the Notice of Hearing package on May 27, 2021 via registered mail, and that he served the Landlord with his evidence via registered mail on August 17, 2021. The Tenant provided tracking numbers for both of these registered mail packages, as proof of service. The Advocate confirmed that the Landlord had received these registered mail packages and had reviewed the contents.

The Advocate said that the Landlord couriered her evidence to the Tenant on September 7, 2021. Courier is not an authorized method of serving documents on another party; however, the Tenant said that he had received the Landlord's evidence

package on September 8, 2021, and had time to review it prior to the hearing. I, therefore, find that the package was served to the Tenant on September 8, 2021, which according to section 25 of the B.C. *Interpretation Act* was eight days prior to the hearing. I find, therefore, that the Landlord served the Tenant with their evidence in compliance with Rule 3.15, which states that a respondent's evidence "must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Preliminary and Procedural Matters

The Tenant provided his email address in the Application and he confirmed this address in the hearing. The Landlord provided her email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, **the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing**.

The Tenant had applied for more time to apply to cancel the Two Month Notice; however, our calculations during the hearing indicated that he had applied on time for this claim. As such, the Tenant's Application for more time to cancel the Two Month Notice is dismissed without leave to reapply.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 1, 2019, ran to October 31, 2020, and then operated on a month-to-month basis. They agreed that the Tenant pays the Landlord a monthly rent of $1,600.00, due on the first day of each month. The Parties agreed that the Tenant has not pay the Landlord a security nor a pet damage deposit.

I asked the Landlord why I should confirm the Two Month Notice, rather than cancel it, as the Tenant has requested. The Advocate said: “Because the Notice was provided in good faith. A close family member intends to occupy the unit - that is, the Landlord’s daughter.”

The Tenant said:

> I’ve always been an excellent Tenant, paid on time, painted the suite, look out for the main house when they’re away. I’m an excellent Tenant. There’s no reason to evict me. The first eviction was by email, and that’s the wrong form, but nobody cares about that. What was interesting and unbelievable is that she said in her email - she said her family’s future plans are uncertain; they’re not sure what they’re going to do, but we need you to leave. The next day I asked her about it - you don’t throw out a tenant and find the reason afterwards.
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> The new renters of the main house - I found out that they’ll start their tenancy on June 1. On June 4, I found out they rented the whole property, including my coach house. [The Landlord] said ‘my family is looking at a number of possibilities’. No one evicts a tenant without a reason. All the reason she could give me is that she wants me out, but doesn’t want me to know the reason.
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> When they renewed my right to use my storage, the new renter, [M.G.], moved in on June 1. My rent includes one parking spot in front of the garage, but there were three vehicles parked there. On June 2, I visited the main house and asked about the parking A woman answered the door and she was angry with me. Michael, the Landlord’s contractor, told me that the new renters…. He was the one who said I have to take my stuff out of the garage, because he stated: ‘Because the renters are going to rent the garage.’ He knew they were going to come and occupy the garage.

> The woman answered the door and was quite angry. She said they were renting the whole property. She was very angry with me. And [M.G.] was there as well; he said we don't get along.
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> On June 3, I received an email from the Landlord's lawyer, saying park on the street.
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> That meeting with the new renters made me very worried. She was lying about the reason why she wanted me evicted. But her reason for the eviction was that she didn't know what to do with the coach house. With that lie it made more sense that [M.G.], was renting the whole property.
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> On June 4 – [M.G.] - his food was delivered to my door by mistake. I was taking it down to him. He confirmed that his lease states that he is renting the whole property including the coach house, that was part of the deal.

The Advocate said:

> Some background on new tenant, [M.G.]. The Landlord started a renovation of the property in December 20, with the intention of renting the house out. After the first eviction notice to [the Tenant], we negotiated with the new tenant, with idea of his taking over the property after the Tenant has left. The new tenant doesn't feel comfortable with a person living in his backyard.
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> The two houses are independent. The renter, [M.G.], has not had, and will not have access to the coach house. Once [the Tenant] leaves, the Landlord's close family member will take over the coach house. There is emotional attachment to this house that the owner has.

I asked the Advocate about M.G.'s belief that he is renting the whole residential property. He said that the two rental units are separate. He said that the other tenant has the garage that is below the coach house.

The Parties discussed the amount and type of storage the Tenant was given in the tenancy agreement; however, I find that this is not relevant to the issues before me.

On the agreement of all Parties, I asked the Advocate to provide me with a copy (and a copy to the Tenant) of M.G.'s tenancy agreement, to see if it mentions use of the Tenant's rental unit.

At the end of the hearing, the Tenant said that he wanted to adjourn, not end the hearing, because he needed more time to present evidence; however, I had already let the hearing run 26 minutes past the hour in which it was scheduled. Further, the Tenant persisted in discussing storage issues at the residential property, rather than issues surrounding the validity of the Two Month Notice. As such, I find that the Tenant had sufficient time to present the evidence that he found most relevant and pressing before the hearing ended 26 minutes late.

The Advocate said that the Landlord is willing to provide two months free rent to the Tenant. He said: “He doesn’t have to pay for the last two months. We’re willing to cover that to resolve this dispute.”

Following the hearing, the Advocate provided the RTB with a copy of M.G.’s tenancy agreement. I have reviewed it for mention of the coach house. On the last line on page two of this tenancy agreement, additional information is provided, as follows: “Coach house is excluded. Yard shared (while coach house is rented to current tenant).”

At the end of the hearing the Advocate said: “[M.G.] will not have access to the coach house after the Tenant leaves. The closer family member is taking over the property.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act 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. Section 49 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse. The Landlord’s evidence is that her daughter plans to move into the coach house – the rental unit.

The Tenant argued that the other tenant on the residential property has said that the coach house is part of his tenancy agreement, which the Tenant said is inconsistent with the Landlord’s contention that a family member will inhabit the coach house when he moves out. However, the other tenant’s tenancy agreement clearly states that the coach house is excluded from that tenancy.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

> 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.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.
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> [emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that the Landlord has provided sufficient evidence to meet her burden of proof in this matter, and I find that the Tenant did not provide sufficient evidence to counter that of the Landlord. Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an **Order of Possession** for the rental unit, pursuant to section 55.

While the effective vacancy date of the Two Month Notice has passed, in the hearing the Landlord granted the Tenant two additional months free of rent, which he can use to find new accommodation. Accordingly, the **effective vacancy date** of the Order of Possession will be **November 30, 2021 at 1:00 p.m.**

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month’s compensation due to a tenant under section 51(1), if steps have not been taken to accomplish the stated purpose for ending the

tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective November 30, 2021 at 1:00 p.m., after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as necessary.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 29, 2021

Residential Tenancy Branch