



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1115153 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDCT, RR, AAT, LRE, OLC, LAT, FFT

Introduction

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

- to cancel a Two Month Notice to End Tenancy for Landlord's Use dated July 21, 2021 ("Two Month Notice");
- for a monetary claim of \$11,000.00 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement;
- for an order directing the Landlord to comply with the Act, regulation or tenancy agreement;
- for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided.
- for an Order to allow access for the Tenants or their guests;
- for authorization for the Tenants to change the lock; and
- to recover the \$100.00 cost of their Application filing fees.

The Tenant, B.G., an agent for the Landlord, S.A. ("Agent"), and counsel for the Landlord, R.D. ("Counsel"), 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 it. 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 Landlord confirmed in the hearing that he had received the Notice of Hearing

package and evidence from the Tenants. However, the Tenant said that they received only the Notice of Hearing, the tenancy agreement, and the Two Month Notice from the Landlord, and not evidence that the Landlord submitted to the RTB. However, Counsel said that the Tenants were served with the Landlord's evidence by posting it on the door of the rental unit. The Landlord submitted photographs of the service of these documents on the door. As there is contradictory evidence before me on this point, I advised the Tenant to let me know if the Landlord or Counsel presented any documentary submissions that he had not received. The Tenant did not so advise me in the hearing. I have not considered the Landlord's evidence in making my Decision.

At the outset of the hearing, I asked for the Landlord's name in this matter, as the Landlord identified on the Two Month Notice and in the tenancy agreement is different than that on the Application. The Agent advised me of the family corporation which owns the residential property, and which company the Agent said he owns. As a result, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses 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 the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Before the Parties testified, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the application, the most urgent of which is the application to set aside a Two Month Notice. I told them that I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. I advised that I would, therefore, only consider the Tenants' 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 onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fees?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2020, with a monthly rent of \$2,250.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$1,125.00, and no pet damage deposit.

I asked the Landlord why I should confirm the Two Month Notice, rather than cancel it, as the Tenants have requested. Counsel said:

[The Agent's] business is property development – he owns the house on a large lot. The Tenants were there without dispute... until June 2021. At that point, [the Agent] started construction in the backyard. Prior to signing the tenancy agreement, the Tenant was advised that there would be construction - the rent was lower for that reason. When it started, the disputes started to arise between Parties. Mid-July, [the Tenant] indicated that he would apply for money for services he was entitled.

[The Agent] decided to terminate tenancy to move his son in. He had prepared the documents necessary to retake the premises. It was then provided to [the Tenant] by posting it on the door. In a previous hearing, [the Tenant] admitted that he received the documents within minutes of putting them on the door. He then disputed it - gave a dispute notice first re monetary issues, but that

didn't change the sense that he was going to terminate it, in any event. [The Tenant] effectively disputed it saying it was retaliatory, but it was signed before [the Agent] received any issues from [the Tenant].

There are other proceedings involved. The violent incident. It happened at the end of July re [the Tenant] and a visitor to the downstairs tenant.

At the beginning of October, he didn't vacate, per the [Two Month Notice], so we filed for an expedited hearing, which was at the end of October. We were able to get an order that he was supposed to remove himself in two days, but he filed an application for review, which was granted. Another expedited hearing is scheduled for December 6.

The second issue happened after the first decision came down. [The Tenant] was removing his possessions from the premises – but he left open doors and windows in inclement weather. The Landlord closed the doors and windows and changed the locks. It was simply to protect the premises – it appeared abandoned.

And he hasn't paid November's rent. We have no intention of detaining his goods. He was aware that he had abandoned the property from our perspective. We went by on the weekend and doors and windows were left open.

We are looking for immediate possession. [The Agent's] son is waiting to move in. he's entitled under the Act to have his son move in. There is nothing retaliatory. He wants the premises back.

The Tenant said:

I didn't know it had been entered and that we're locked out. We were away from town for a few days; we were moving some things out, because we were in fear that we did have a hearing recently and it was ruled in favour of Landlord. The review was filed on the basis of new evidence – that the Landlord and his lawyer committed fraud. The review was granted, as we had the criteria to meet the review. There is a new hearing on December 6. The other hearing was cancelled.

I have a timeline, too. As far as vacating the place, because of first notice, we

moved some of our stuff into storage. Not all our belongings – I believe he has no right to enter our house and lock us out. It's illegal – you're not supposed to change locks or enter the premises without an order.

I told him I was going to serve notice, and then he filed for the Two Month Notice. He could have served it at any time, as it was printed. It was six days later when I served him his notice. He put it on my door a minute later - clear retaliation.

The "violent incident"? A close friend of the Landlord, [T.H.], is his name. He lives below us. [H.] moved in at this point, when all the problems arose. His friend said he could come over any time he wanted. [T.H.] said he was a guest of his. And 15 minutes later, he was arrested on the front steps for assaulting me. He's being charged.

I asked the Tenant the relevance of his testimony to the validity of the Two Month Notice. He said he was just responding to what the Landlord had said.

Counsel said:

My client can take back possession by providing a Two Month Notice to him. He has a son going to move in; that was his intention prior to any of this arising - that's why he drafted and served the Notice. That's his intention.

As far as it being retaliatory – that's false; it happened to be served at that time. It was simply a timing issue.

I asked the Landlord why he had not served the Two Month Notice closer to the date that it was signed, and he said:

I had that Notice put aside in my truck on the 21st or 22nd. I was waiting until the end of the Notice to serve it. We were leaving on vacation for a few days. He happened to serve me. I didn't even read it. I put it in my truck and then put it on his door. It was a Two Month Notice. He has a copy of that. It's to move my son into the house. They are in limbo, living with parents until this is resolved.

I asked the Tenant if he does not believe that the Agent's son is going to move in, and he said:

They said the doors and windows were open is the reason why they entered the

house. Do they have any evidence to show that? We always lock the doors; there is no reason to enter if the doors were open, unless I was carrying something to my car.

Re his son – he is not listed on the eviction notice. I found that out later when they claimed that. We don't feel it was served properly – in retaliation – see our file with reasons. He has threatened to do it before. If we ever filed to enforce our rights as a tenant. . . he has tried to intimidate us. He filed two other claims and they were withdrawn, so we received those notices, which I've included. It says on the notice to contact us, if the disputes are withdrawn, but he did not for both of those.

We submitted rent payment on October 1st, and he accepted it as normal payment – e-transfer. He never mentioned that this is 'for use an occupancy' in the meantime. If his notice was withdrawn without explanation – we felt that the tenancy was reinstated, because rent was not accepted 'for use and occupancy only'. We didn't feel he was acting in good faith.

The Tenant said that he did not pay rent for November 2021, as he said he was awaiting the new hearing on December 6th.

In a statement entitled: "Explanation of Evidence", the Tenants wrote:

We, the Tenants, argue that any single item listed [above], according to the BCTA, is grounds to cancel this Notice. The combination of issueing it in poor faith and in retaliation, accepting rent past the eviction date and reinstating the tenancy, as well as receiving confusing emails stating the Landlord has withdrawn his claims, without any explanation from the Landlord which he is required to do when withdrawing claims according to the Residential Tenancy Branch.

This Eviction Notice has been issued in poor faith ,and against the BCTA. We have shown clear evidence that the landlord used threats, intimidation, and illegal eviction tactics, in retaliation for us filing for a Dispute Resolution hearing through the BC Tenancy Branch, and this notice should be cancelled. .

[reproduced as written]

In his written submission, the Tenant pointed to communications he had with the Landlord, including [which are reproduced, as written]:

July 13, 2021

-[S.A.] (referred to as "the Landlord" onward) sends an email (evidence file: Threat to Evict.png, Threat to Evict Contd.png) threatening to serve us ([B.G.] and [L.L.], referred to as "the Tenants" from here on) with an eviction notice should we apply for a BC Tenancy Dispute Resolution Hearing to have our rights as tenants enforced. This is illegal under the BCTA. Landlord writes on July 13,2021:

‘... if you want to pursue with residential branch, go ahead, i will file my own claim as well. i will have affidavits from the neighbours to show the neighbour you have been in the past.’

-This "claim" he refers to filing in retaliation, is this 2month notice to end tenancy is for family use. We argue this is obviously untruthful, issued in bad faith, and retaliation. Landlord also uses his relationship with neighbours as intimidation if we were to file for a dispute hearing, clearly attempting to intimidate us, the tenants, from attempting to have our rights as tenants enforced. This is also a violation of the BCTA, using threats and intimidation to prevent tenants from filing for a Dispute Resolution Hearing to have their rights as tenants enforced. For these reasons this notice should be cancelled.

July 16 , 2021

-Landlord sends another intimidating and threatening email stating " you will move your things by the given date, or I will be launching additional files against your with residential tenancy"

-The only "claims" my landlord filed, were that the 2 month notice of Eviction was for family use. It is very clear from the evidence this notice was issued illegally as retaliation, and not in good faith. He threatens to file a claim on July 13, 2021 , and July 16, 2021, then does file for a 2month Notice of eviction on July 21, 2021, 5 days after the threat. It is obvious to us the Landlord is abusing the Good Faith aspect of the 2 month notice, by issuing it with an ulterior motive,along with threats and intimidation to the tenants in an attempt to prevent them from filing for a hearing. The "moving our things" portion of that sentence, will be addressed in our adjoined dispute file, showing the landlord also removes property and access to our belongings in retaliation, withouth proper notice or

any compensation, and gives access to our private storage area, to the tenant, [T.H.], who would be arrested and charged for assault, after violently attacking me on July 28, 2021. RCMP file# ws-XX XXXXX (records included with evidence for adjourned hearing).

. . .

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 (4) of the Act states that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

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.

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.

[emphasis added]

I find that the Two Month Notice is consistent with section 52 of the Act, as to form and content. And I find that the Landlord has provided sufficient evidence to indicate that a member of his immediate family wishes to move into the residential property after the Tenants vacate it.

I find that the Tenants' claims about the Landlord having served the Two Month Notice in retaliation for the Tenants' having served the Landlord with a Notice of Hearing fails on the face of it. The Two Month Notice was dated July 21, 2021; however, it was not served until July 26, 2021. I find this indicates that the Landlord had thought through

and planned to serve the Two Month Notice days prior to the Tenants having served him with their own Notice of Hearing.

I find that the Tenants' other claims about being locked out when the Landlord thought the residential property had been abandoned are not relevant to the matter before me. In addition, I find that the fact that the Landlord did not specify on the Two Month Notice which family member would be moving in is irrelevant. A landlord is not required to specify this information on a two month notice to end the tenancy for landlord's use.

Based on the evidence before me overall, I find that it is more likely than not that the Landlord plans for his son to move into the residential property, which is the purpose for having served the Tenants with the Two Month Notice. 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. As the effective vacancy date of the Two Month Notice has passed and the Tenants are overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenants. I will alert the arbitrator scheduled to hear the expedited matter on December 6, 2021, that the tenancy has ended and to cancel the hearing.

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. I understand that the Tenants have not paid rent for November 2021, therefore, I find that this matter has been resolved already.

Further, in addition to the one month's compensation due to the Tenants 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

Tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenants are unsuccessful in their Applications, as the Agent provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenants' Applications are 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 two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants 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: November 15, 2021

Residential Tenancy Branch