



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDC, OLC, RP

Introduction

Pursuant to the *Residential Tenancy Act* (the “*Act*”), the Tenant applies for the following relief:

- An order under s. 49 to cancel a Two-Month Notice to End Tenancy for Landlord’s Use signed on June 19, 2021;
- An order under s. 47 to cancel a One-Month Notice to End Tenancy for Cause signed August 26, 2021;
- A monetary order for compensation under s. 67;
- An order that the Landlord comply with the *Act*, the tenancy agreement, or the regulations under s. 62; and
- An order for repairs under s. 32.

T.C. appeared on her own behalf as Tenant. S.M. appeared at the beginning of the hearing as witness for the Tenant. At the outset of the hearing, I dismissed S.M. until called upon to provide evidence. The Tenant did not call S.M. as a witness during the hearing. B.G. appeared on her own behalf as Landlord. N.S., property manager to the Landlord, appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord indicated having served the Two-Month Notice to End Tenancy signed June 19, 2021 on the Tenant by posting it to the Tenant’s door and was acknowledged received by the Tenant by way of text message received by the Landlord on June 20,

2021. I find that the Two-Month Notice to End Tenancy signed June 19, 2021 was served in accordance with s. 88 of the *Act* and the Tenant acknowledged receipt on June 20, 2021.

The Landlord further indicated having served the One-Month Notice to End Tenancy signed on August 26, 2021 by posting it to the Tenant's door on August 29, 2021. The Landlord indicated receiving a text message on August 30, 2021 acknowledging receipt of the Notice to End Tenancy signed August 26, 2021. I find that the One-Month Notice to End Tenancy signed August 26, 2021 was served in accordance with s. 88 of the *Act* and the Tenant acknowledge receipt on August 30, 2021.

The Tenant advised having served the Notice of Dispute Resolution on or about July 19, 2021 by leaving a copy by the Landlord's door. Subsequent amendments were filed by the Tenant, one signed August 30, 2021 and the second September 28, 2021. The Tenant indicated having served the amendments on the Landlord by leaving copies at the Landlord's door. The Landlord acknowledges receiving voluminous materials from the Tenant and was unable to confirm when the documents were specifically received. I find that the Tenant served the Notice of Dispute Resolution and amendments of August 30, 2021 and September 28, 2021 in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the Notice of Dispute Resolution on July 22, 2021, the amendment of August 30, 2021 on September 2, 2021, and the amendment of September 28, 2021 on October 1, 2021.

The Landlord served evidence on the Tenant by personally serving it on the Tenant on October 24, 2021. The Tenant acknowledged receipt of the Landlord's evidence. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act* on October 24, 2021.

The Landlord provided a copy of the tenancy agreement and indicated that it was not served on the Tenant but had been the subject matter of the previous hearing before the Residential Tenancy Branch on June 18, 2021. Though not served on the Tenant for the purposes of this hearing, I accept that the Tenant was sufficiently served with the tenancy agreement as it was part of the record for the previous hearing. I find that the tenancy agreement was sufficiently served in accordance with s. 71(2) of the *Act*.

Preliminary Issue – Tenant's application

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure that we are able to address disputes in a timely and efficient manner.

Upon review of the Tenant's application and amendments, I find that the primary issue is whether the tenancy will continue or end pursuant to two notices to end tenancy that are subject to the application. Some of the additional relief is only relevant to the extent that the tenancy continues.

Accordingly, pursuant to Rule 2.3 of the Rules of Procedure, I dismiss the Tenant's following claims with leave to reapply:

- A monetary order for compensation under s. 67; and
- An order that the Landlord comply with the *Act*, the tenancy agreement, or the regulations under s. 62.

The hearing proceeded on the issues tied to the notices to end tenancy signed on June 19, 2021 and August 26, 2021.

Preliminary Issue – Tenant's evidence

The Tenant submitted several evidence packages to the Residential Tenancy Branch. It should be noted that Rule 2.5 requires applicants to file copies of all documentary and digital evidence to be relied upon at the hearing when they make their application. That did not occur here and the additional evidence that was provided does not correspond to the time the Tenant filed her amendments.

The Tenant indicates having served her evidence by leaving a copy at the Landlord's door immediately after having submitted them to the Residential Tenancy Branch. The Landlord was unable to keep track of all the evidence received by the Tenant or when it was received. However, the Landlord acknowledged she had several inches of documents and evidence received from the Tenant. I note some of the evidence appears to be related to issues that were severed pursuant to Rule 2.3 and were served

late. I excluded all evidence from the Tenant that was served in contravention of the 14-day time limit set by Rule 3.14 of the Rules of Procedure. I further exclude all evidence related to issues that are not the subject matter of the application after being severed by me at the beginning of the hearing. I find that all other evidence was sufficiently served pursuant to s. 72(2) of the *Act*.

Issue(s) to be Decided

- 1) Whether the Two-Month Notice to End Tenancy signed June 19, 2021 should be cancelled?
- 2) Whether the One-Month Notice to End Tenancy signed August 26, 2021 should be cancelled?
- 3) Is the Landlord entitled to an order for possession pursuant to either notice?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the tenancy began on May 1, 2021. Rent was set at \$2,800 per month. The Landlord confirmed holding a security deposit of \$1,400.00 in trust for the Tenant.

As described by the parties, the subject rental unit is the main floor of a single-family home which was occupied by the Landlord prior to the Tenant taking up occupancy pursuant to the tenancy. The Landlord appears to be living in a separate unit in the basement which has its own bedroom, bathroom, and kitchenette.

The Landlord submits that the written tenancy agreement provided by them was a matter of some dispute at a previous hearing before the Residential Tenancy Branch on June 18, 2021. The Landlord argues that the arbitrator on that occasion had made a finding that the written tenancy agreement was, in fact, the tenancy agreement and that there was no longer any dispute on the terms of the tenancy.

I have reviewed the previous decision, which dealt with various claims made by the Tenant, including a previous claim to cancel a two-month notice to end tenancy. The Landlord confirmed withdrawing the previous two-month notice to end tenancy signed

on May 1, 2021. The Landlord indicates it was withdrawn on or about May 20, 2021. The Tenant disputes this date. Both agree that it was withdrawn, a fact made clear in the previous decision date June 18, 2021. The previous decision itself only dealt with a dispute regarding the shared use of a garage at the residential property.

The Landlord submits that the Two-Month Notice to End Tenancy signed June 19, 2021 was issued on the basis that the Landlord's daughter would be moving back into the residential property. The Two-Month Notice to End Tenancy lists that it was issued because the Landlord or the Landlord's spouse would occupy the rental unit.

The Landlord states that the daughter moved away from the residential property in March 2021. It appears the daughter is a student at a post-secondary institution in the community whose studies were disrupted by the COVID-19 Pandemic.

When the daughter moved out, she wanted to strike-out on her own and was working full-time. The Landlord indicates that the daughter is renting another rental unit within the community but has since returned to her classes and is working less. Financially, the daughter needs to return home and can no longer sustain the added expense of rent with the reduced workhours brought on by the return to classes.

The Tenant argues that the Landlord is not acting in good faith on the basis that the previous two-month notice to end tenancy signed May 1, 2021 was issued because the Landlord's child would occupy the rental unit. The Tenant further argues that the Landlord's daughter can live with her father who resides nearby.

The Tenant submitted that there has been an interpersonal conflict between her and the Landlord since May 1, 2021 after a dispute regarding the Landlord's access to the rental unit to water a fig tree that belonged to the Landlord.

The Landlord indicates that her daughter cannot reside with her father as it is in a neighbouring community and is too distant to her daughter's post-secondary school. The daughter was not called upon to provide evidence.

The Landlord issued a One-Month Notice to End Tenancy signed August 26, 2021 on the following grounds:

- There are an unreasonable number of occupants in a rental unit;

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- That a security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The Landlord, when the filing in the One-Month Notice to End Tenancy, describes that the specific breaches of the tenancy agreement relate to four people living within the residential unit, that the Tenant has signs up in the front-yard, and that the Tenant's dog, which was acquired by the Tenant in early July, was large when the tenancy agreement permitted a small dog only.

The Landlord made no submissions with respect to the number of occupants within the rental unit. Based on the Tenant's submissions, it appears her daughter lives with her.

The Landlord submits that the Tenant's dog, a German Shepard/Poodle mix, is a large dog breed. The tenancy agreement stipulates a clause 4(a) that only small dogs that do not jump fences or dig would be permitted. The Landlord argued that they were not notified of the Tenant acquiring the dog. The Tenant indicates that the Landlord never asked for a pet damage deposit. There is no evidence provided by the Landlord that indicate a request for a pet damage deposit was made.

The Landlord further submitted that signs were in the front yard in contravention with the tenancy agreement, which prohibits the redecorating of the residential property by the Tenant. Clause 16 of the tenancy agreement indicates that the Tenant is to obtain written authorization by the Landlord before placing or allowing to be placed any placard, notice, or sign inside or outside the property.

The Landlord highlight three letters, May 20, 2021, June 9, 2021, and August 2, 2021, which was argued to contain warnings with respect to the Tenant's conduct.

An additional issue was raised by the Landlord, being the removal of the Landlord's property from within the rental unit and placed within the garage. The Landlord further indicated that some of the personal property is exposed to the elements. These submissions do not appear to relate to either notices to end tenancy that are the subject matter of the Tenant's application.

Analysis

The Tenant applies to cancel two notices to end tenancy, the first signed on June 19, 2021 and the second signed on August 26, 2021.

In accordance with s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit pursuant to s. 49(3) of the *Act*. Rule 6.6 sets out that a landlord bears the onus of showing that a notice to end tenancy is made in compliance with the *Act*.

Policy Guideline 2A states the following with respect to the good faith requirement set out under s. 49:

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.

I find the following timeline particularly relevant with respect to the Two-Month Notice to End Tenancy signed June 19, 2021:

- May 1, 2021 – Tenancy begins
- May 1, 2021 – First Two-Month Notice to End Tenancy issued related to the Landlord's daughter occupying the rental unit
- May 20, 2021 – The Two-Month Notice to End Tenancy of May 1, 2021 withdrawn
- June 18, 2021 – The parties attend arbitration before the Residential Tenancy Branch related to the Tenant's previous application disputing the May 1, 2021 notice to end tenancy.

- June 19, 2021 – The Landlord signs a second Two-Month Notice to End Tenancy on the basis the Landlord would reoccupy the rental unit with an effective date of August 31, 2021.
- August 26, 2021 – The Landlord signs a One-Month Notice to End Tenancy with an effective date of September 30, 2021

I place significant weight on the fact that the Landlord has only recently issued a two-month notice to end tenancy for landlord's use of the property, withdrawing it in advance of the previous hearing, and reissuing a new one the day after the parties were before the Residential Tenancy Branch. The Notice to End Tenancy signed June 19, 2021 was not issued on the basis that the Landlord's daughter would move into the rental unit, rather it states it is for the Landlord or the Landlord's spouse to occupy. Despite this, the Landlord's submissions focused almost entirely on her daughter's anticipated return to the residential property. I place significant weight on the fact the Landlord's daughter, who's intentions would be relevant to the notice, did not provide evidence.

I find that the Landlord has failed to show that she or her spouse would occupy the rental unit, as contemplated within the Notice to End Tenancy of June 19, 2021. I further find that the Notice to End Tenancy was issued in bad faith on the basis that it followed closely on the heels of the previous notice, issued on the first day of the tenancy, being withdrawn and the day after the previous hearing. Accordingly, the Two-Month Notice to End Tenancy signed June 19, 2021 is cancelled.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause. Presently, sections 47(1)(c), (h), and (l) are relevant based on the Notice to End Tenancy signed August 26, 2021. Again, the Landlord bears the onus of showing the notice should be upheld.

Dealing first with the unreasonable number of occupants, the Landlord made no submissions nor did they provide documentary evidence on this point. In short, the Landlord has failed to discharge their evidentiary notice in any way with respect to this aspect of the One-Month Notice to End Tenancy signed August 26, 2021. Accordingly, it may not be enforced on this ground.

The second aspect, that of the breach of a material term, requires the Landlord to provide written notice to the tenant that they are in breach of a material term and provide an opportunity for the Tenant correct the situation within a reasonable time after receiving the notice. The Landlord must also establish that the term they seek to

enforce within the tenancy agreement is, in fact, material to the contract, which requires an analysis of the parties' intention when the agreement was made.

The Landlord highlights three letters as proof that the breach of the Tenant obtaining a dog that was too large and posting signs in the front yard was a breach of a material term. I have reviewed the letters of May 20, 2021, June 9, 2021, and August 2, 2021. None of the letters refer to the size of the Tenant's dog nor mention the signs in the front yard. Though not mentioned in the One-Month Notice to End Tenancy, no mention is made in the letters of the Tenant moving the Landlord's personal property out of the rental unit. I find that the Landlord has failed to establish that a written demand to comply with a material term, as contemplated by s. 47(1)(h) of the *Act*, has been made at all. Accordingly, this ground of the One-Month Notice to End Tenancy signed August 26, 2021 must fail.

The final ground, that of failing to pay a pet damage deposit or security deposit within 30 days as required under the tenancy agreement. The tenancy agreement is silent with respect to a pet damage deposit. Further, I accept the Tenant's submissions that no pet damage deposit had been requested by the Landlord. Finally, the Landlord failed to demonstrate that a request was made for a pet damage deposit and confirmed holding a security deposit of \$1,400.00, as contemplated by the tenancy agreement. This final ground of the One-Month Notice to End Tenancy signed August 26, 2021 must also fail.

Based on the above, I cancel the One-Month Notice to End Tenancy signed August 26, 2021. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

Pursuant to s. 47, I hereby cancel the One-Month Notice to End Tenancy signed August 26, 2021. Pursuant to s. 49, I cancel the Two-Month Notice to End Tenancy signed June 19, 2021. The tenancy shall continue until it is 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: November 02, 2021

Residential Tenancy Branch