Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in an unspecified amount pursuant to section 67.

The tenant attended the hearing. The landlord was represented at the hearing by his son ("**GK**") and his wife ("**RK**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and GK confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. GK testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Nature of Tenancy

The parties entered into a written tenancy agreement naming the tenant as the tenant and the landlord as the landlord. However, the tenant testified that he never lived in the rental unit. Rather, he testified that two individuals who he referred to as "guys who did work for me" lived there instead. He insisted that they were not his employees (hereinafter I will refer to these individuals as the "**workers**"). The workers lived in the rental unit (which is a modular home) and did some mechanical and welding work for the tenant in a shop located on the residential property of which the tenant and the workers had exclusive use. Unconnected to the tenancy agreement, the workers also did some work for the landlord in the shop.

The shop and the modular home are located on a 42-acre berry farm. The tenant and the workers did not have use of the berry farm. The farm and the residential property have a shared driveway.

The landlord was aware that the workers, and not the tenant, resided on the residential property. GK stated that the landlord did not rent directly to the workers, as they were not “the type of people” that the landlord would want to rent to, but that the tenant was such a person. The tenant stated that he allowed the workers to stay on the residential property “out of the goodness of [his] heart”. The tenant paid the monthly rent to the landlord.

There is no evidence to suggest that the tenant ran a business from the residential property or that the workers lived elsewhere. I find that the primary purpose of the tenancy agreement was residential, notwithstanding the fact that the workers did some work out of the shop. I find that the nature of the relationship between the workers and the tenant is that of a tenant/sub-tenant relationship. The landlord consented to this arrangement because he felt a level of assurance that the tenant would bring, guaranteeing that the rent would be paid on time.

The tenancy agreement was for a one-year, fixed term, starting June 1, 2020 and ending May 30, 2021. The parties agree that the tenant told the landlord that he wanted to end the tenancy once the term was up. However, the landlord told him that if he wanted to do this, he would need to ensure that the workers would leave the residential property as the landlord would not be entering into a new tenancy agreement with the workers. The tenant said that the workers were unable to find somewhere to relocate to after the end of the fixed term and that as a result he continued to pay rent on their behalf in June and July 2021 (which the landlord accepted).

On July 4, 2021, the landlord served the tenant personally with the Notice. The Notice named the tenant as the tenant (as opposed to the workers).

For the foregoing reasons, I find that the tenancy agreement continued past the end of the fixed term, on a month-to-month basis. I do not find that the tenancy ended at the end of May 2021. If the tenant’s verbal notice that he intended to end the tenancy at the end of the fixed term actually had the effect of doing so (which I do not find was the case, as such notices need to be written), then the conduct of the parties had the effect of reinstating the tenancy in June 2021.

As such, I find that I have jurisdiction to adjudicate this dispute between the parties, as they are both parties to the tenancy agreement, and that the tenancy agreement is residential (as opposed to commercial) in nature.

Preliminary Issue – Workers Vacated Rental Unit

The parties agree that the workers vacated the residential property as of October 21, 2021. As such, the tenant no longer requires an order cancelling the Notice or an order requiring the landlord to comply with the Act. These issues are now moot.

As such, I dismiss these portions of the application, without leave to reapply.

The balance of the decision will address the tenant's monetary claim, which while not specifying an amount on the application, the tenant described as follows:

> As per the tenancy if a family member does not reside in the home as it has not been sold. We are seeking 12 months rent
>
> For one year we have been paying the hydro for the home as well as the pump that waters the blueberry plants the water run all day and night which ads bill to the hydro bill.
>
> [as written]

At the hearing, the tenant stated that the basis for seeking the 12 months rent was actually due to hardship suffered by the workers caused by the landlord not advising the tenant that the residential property had been sold as soon as the contract of purchase and sale was entered into (November 2020).

Preliminary Issue – Agreement on Arrears and Security Deposit

During the hearing, GK stated that the tenant did not pay the landlord any rent in August or September 2021. The tenant agreed this was the case, however, he stated he considered the August 2021 rent not to be due, as he is entitled to one free months' rent per section 51(1) of the Act (compensation for being issued the Notice). The landlord has not yet returned the security or pet damage deposit to the tenant or made an application to keep it.

Despite these issues not being before me, the parties expressed a desire to resolve them at the hearing. The parties agreed that the landlord could retain the security and pet damage deposit in exchange for the landlord agreeing to waive any claim against the tenant for rental arrears for August and September 2021 and the tenant waiving a claim for compensation pursuant to section 51(1) of the Act. As such, I order that the landlord can keep the deposit.

The parties stated that the landlord sold the residential property, and the new owner took possession of it on October 1, 2021. Accordingly, October rent was payable to the new owner and not the landlord. The tenant agreed that he did not pay the October rent. The agreement set out above does not affect the new owner's right to bring a monetary claim against the tenant to recover October 2021 rent.

Additionally, GK testified that the landlord was not required to transfer the security deposit or pet damage deposit to the new owner as a term of the contract of purchase and sale.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order for an amount equal to 12 months' rent plus the increased cost of the hydro bill caused by the landlord's actions; and
2) recover the filing fee?

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.

I have set out many of the details of the tenancy agreement above. I will not repeat them here. The parties entered into the tenancy agreement on June 1, 2020. The workers moved in on June 13, 2020. The tenancy ended on October 21, 2021. Monthly rent was $2,500 excluding utilities. At the start of the tenancy, the tenant provided the landlord with a security deposit of $1,250 and a pet damage deposit of $1,250. The landlord still holds these deposits in trust for the tenant.

The tenant stated that he gave the landlord his forwarding address at the start of the tenancy (having remained the same throughout the tenancy, as the tenant did not reside at the rental unit during the tenancy). He did not provide confirmation that this address remained his forwarding address after the tenancy ended.

The tenant testified that a small agricultural area (the "**agricultural area**") abuts the residential property, and that the water pump used to service this area is the same water pump which is used for the needs of the residential property (the "**pump**"). This area is separate from the berry farm, which is serviced by its own pump.

The tenant stated that during the "hot spell" in the summer of 2021, the pump was running all day and night to keep up with the needs of the agricultural area. Additionally, throughout the summer, the pump ran intermittently to water the agricultural area.

The tenant argued that the landlord should be responsible for the increased cost of electricity caused by the pump running to service the agricultural area. The tenant was not able to provide an exact figure as to how much this cost actually was. He submitted a BC Hydro invoice for the period of May 20 to June 17, 2020. That invoice showed the amount paid for the prior billing period (that is, for the billing period prior to the start of the tenancy) as $12.32. He argued that this was indicative of the monthly operating cost of the pump when it was only servicing the agricultural area, given that the workers did not move into the rental unit July 13, 2020. As such, any electricity used prior to that date would be solely attributable to what the landlord was using; and the landlord only used the pump.

The tenant argued he should be entitled to $12.32 per month for five months (as this was the amount of time during the pump was used to water the agricultural area).

GK did not dispute that the cost of running the pump was included on the tenant's utility bill, or that the landlord should reimburse the tenant this cost. Rather, he argued that cost of running the pump was much lower. He suggested it was $2 to $3 per month at most. He did not provide any specific evidence as to the power consumption of the pump and did not explain why the last utility bill prior to the start of the tenancy was for $12.32, if the only thing drawing power during this period of time was the pump, and the pump was only being used for servicing the agricultural area. GK stated that the pump was run from the start of May to the end of September 2021

As stated above, in November 2020, the landlord entered into a contract of purchase and sale to sell the berry farm and the residential property. The contract was completed on October 1, 2021.

On July 4, 2021, the landlord served the tenant with a 2 month notice to end tenancy for landlord's use of the rental unit (the "**Notice**"). It specified the reason for ending the tenancy as:

> All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or close family member intends in good faith to occupy the rental unit.

A copy of the purchaser's written request for the seller to issue the Notice was attached. The Notice listed an effective date of September 30, 2021.

The tenant argued that the landlord should have notified him that the residential property had been sold as soon as the contract of purchase and sale was entered into. He argued that this would have given the workers enough time to find somewhere new to live. He stated that one of the workers is currently homeless as a result of the residential property having been sold. The tenant argued that the landlord should pay an amount equal to 12 times the monthly rent to compensate the tenant for not having received enough notice to move and for the stress this caused.

GK argued that the Act does not require the landlord to give notice of the sale of a rental unit to a tenant, and that two months' notice is all that is required when the purchaser of the rental unit indicates that they intend to occupy the rental unit. Additionally, he noted that the landlord gave more than the minimum amount of notice, having served the Notice almost three months prior to the effective date.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the "**Four-Part Test**")

1. 12 Months' Compensation

The Act does not require a landlord to notify a tenant as soon as a contract or purchase and sale is entered into. Section 49(2) and (5) of the Act sets out the requirements:

> **Landlord's notice: landlord's use of property**
> (2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy
> (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
> (i) not earlier than 2 months after the date the tenant receives the notice,
> (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
> (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
> […]
>
> (5) A landlord may end a tenancy in respect of a rental unit if
> (a) the landlord enters into an agreement in good faith to sell the rental unit,
> (b) all the conditions on which the sale depends have been satisfied, and
> (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
> (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
> (ii) the purchaser is a family corporation and 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.

As such, I find that the landlord complied with the Act by issuing the Notice on July 4, 2021. He served the Notice more than two months prior to the effective date of the Notice and indicated that all the requirements of section 46(5) of the Act had been satisfied. I do not find the landlord breached the Act.

Accordingly, the tenant has failed to satisfy the first part of the Four-Part Test. I dismiss this portion of his application, without leave to reapply.

I note that section 51(2) of the Act sets out a basis for the making of an award of 12 times the monthly rent:

> **Tenant's compensation: section 49 notice**
> (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that
>
> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
> (b) the rental unit, except in respect of the purpose specified in section 49 (6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
>
> [emphasis added]

This section is not applicable to the landlord, as in instances where the property has been sold, it is the purchaser who may be liable to pay this amount. The purchaser of the residential property was not a party to this application. Nothing in this decision should be interpreted as making any finding as to the merits of the of a claim against the tenant may have against the purchaser.

2. Hydro Bill

The landlord concedes that the tenant improperly paid for the landlord’s electrical usage. As such, I find that the landlord has breached the tenancy agreement. Additionally, there is no dispute that the tenant suffered a monetary loss as a result of this breach. The first two parts of the Four-Part Test are therefore satisfied. The dispute between the parties is as to the amount of the tenant’s loss.

The tenant suggested that I calculate the loss based on the hydro bill that predated the tenancy. I do not think that this would be appropriate, as that hydro bill covered hydro use of more than the pump. Electronic appliances, even when not in use, consume a small amount of power. Power is lost in transmission along power lines from the meter

to the rental unit. These would be costs that the tenant would have to bear during the tenancy.

However, I without any corroborating evidence from the landlord, I cannot accept GK's assertion that the pump would only use $2 or $3 worth of power per month. I cannot say how that figure was arrived at.

Accordingly, I find that nominal damages are appropriate. Policy Guideline 16 discusses such damages:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In the circumstances, I find that nominal damages of should be assessed at $50.

Conclusion

Pursuant to sections 67 of the Act, I order that the landlord pay the tenant $50 in nominal damages.

I dismiss all other parts of the tenant's application, without leave to reapply.

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 17, 2021

Residential Tenancy Branch