



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, CNOP**

Introduction

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

- cancellation of a Two Month Notice to End Tenancy for Landlord's Own Use dated October 28, 2021 ("2 Month Notice") pursuant to section 49;
- an order that the Landlord comply with the Act, Residential Tenancy Regulations ("Regulations") and/or tenancy agreement pursuant to section 62; and
- an order of possession in favour of the Tenant pursuant to section 54(2).

A representative of the Landlord ("LM") and the and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. One witness for the Tenant ("CC") attended the hearing when required to provide affirmed testimony.

The Tenant stated he served the Landlord with the Notice of Dispute Resolution Proceeding ("NDRP") by email on November 15, 2021. The Tenant did not serve the NDRP in accordance with one of the methods of service set out in section 89 of the Act. However, LM acknowledged receipt of the NDRP and stated the Landlord was prepared to proceed with the hearing. I find that the NDRP was sufficiently served on the Landlord in accordance with section 71(2)(b) of the Act.

LM stated the Landlord served its evidence on the Tenant by email on January 12, 2022. The Tenant acknowledged receipt of the Landlord's evidence. I find that the Landlord's evidence was served on the Tenant in accordance with section 88 of the Act.

Preliminary Matter – Service of Tenant’s Evidence on Landlord

The Tenant stated he served his evidence by email but LM denied the Landlord received any evidence from the Tenant. The Tenant then stated that he uploaded his evidence to the Residential Tenancy Branch but may have overlooked serving it on the Landlord.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As LM testified that the Landlord did not receive any evidence by email from the Tenant and the Tenant himself was uncertain whether he served his evidence on the Landlord, I find that the Tenant has failed to demonstrate to my satisfaction that the Tenant served his evidence on the Landlord. Based on the above, I will not accept the Tenant’s evidence for the purposes of the hearing. I told the Tenant he had the option of giving testimony, and calling witnesses, to give testimony at the hearing in place of the evidence that was not accepted for the hearing.

Preliminary Matter – Incorrect Respondent Named as Landlord

I noted that the Tenant’s application named LM as the Landlord but the 2 Month Notice and tenancy agreement stated the name of the Landlord was a corporation (“LKM”) The Landlord stated that LKM is the owner and landlord of the rental Unit. LM requested an amendment to the application to remove him as the respondent and to add LKM as the Landlord.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an

application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

As the Landlord's request could reasonably be anticipated by the Tenant, I amended the Tenant's application to make these corrections to remove LM as a respondent and to add LKM as the respondent.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

The Tenant has sought an Order of Possession against the Landlord. However, the Tenant admitted at the outset of the hearing that he was still residing in the rental unit.

Rules 6.2 of the RoP states:

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

I do not have the authority to issue an Order of Possession against the Landlord where the Tenant is still in possession of the rental unit. I dismiss, without leave to reapply, the Tenant's claim for an Order of Possession against the Landlord.

Rule 2.3 of the RoP states:

2.3 Related issues Claims made in the application must be related to each other.

Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The most important issue in the Tenant's application is to address whether the 2 Month Notices should be cancelled. I find the Tenant's claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement is unrelated to the Tenant's

claim for cancellation of the 2 Month Notices should be cancelled. Based on the above, I dismiss the Tenant's claim that the Landlord comply with the Act, Regulations and/or tenancy agreement with leave to reapply.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If the Tenant is not entitled to cancellation of the 2 Month Notices, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The Landlord testified the tenancy commenced on October 15, 2019, for a fixed term ending October 15, 2020, with rent of \$3,500.00 per month payable on the 15th day of each month. The Tenant was required to pay a security deposit of \$1,750.00 by October 14, 2019. The Landlord stated the Tenant paid the security deposit and the Landlord was holding the security deposit in trust for the Tenant.

The Landlord stated 2 Month Notice was served on the Tenant's door on October 28, 2021. The Tenant acknowledged receipt of the 2 Month Notice. I find the Tenant was deemed to have been served with the 2 Month Notice on October 31, 2021.

The Landlord testified the rental unit was sold to purchasers (the "Buyers"), the names of which were stated in the 2 Month Notice. The Landlord stated he received a completed and signed Buyers Notice to Seller for Vacant Possession ("Buyers Notice") wherein the Purchasers requested the Landlord give notice to the Tenant to vacate the rental unit on the basis that all conditions of the purchase and sale agreement had been satisfied or waived and that the Purchasers intend in good faith to occupy the rental unit. The Landlord submitted a copy of the Buyers Notice to corroborate his testimony. The Landlord stated that, relying on the certification of the Buyers in the Buyers Notice that they intend in good faith to occupy the rental unit, he had no reason to believe the buyers were not acting in good faith. The Landlord stated the Buyers were living in a hotel in Victoria pending moving into the rental unit. The Landlord also stated that he

had been told by the Buyers that their personal possessions were being shipped to Victoria on February 11, 2022.

The Tenant testified that he was told by CC that she had overheard a conversation between the Buyers and one of their agent talking about moving the staircase in the rental unit. The Tenant submitted that this would take a lengthy period of time and that this was evidence that the Buyers would not be moving into the rental unit within a reasonable period of time. The Tenant testified that he had been bullied by the real estate agent in connection with access to the rental unit for viewings by prospective purchaser. The Tenant stated that the agent had put him at risk of infection by COVID-19.

CC testified that, while the Buyers were viewing the rental unit, she overheard the Buyers tell their agent that they were considering moving the staircase in the rental unit.

Analysis

The Landlord testified he served the 2 Month Notice by email on October 28, 2021. The Tenant acknowledged receipt of the 1 Month Notice. I find the Landlord served the 2 Month Notice through the Tenant's mail slot by email on October 28, 2021. Pursuant to section 90, the Tenants were deemed to have received the 2 Month Notice on October 31, 2021. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the 2 Month Notice, being November 15, 2021. The Tenants filed their application for dispute resolution to dispute the 2 Month Notice on November 9, 2021. I find the Tenants made their application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

Residential Tenancy Policy Guideline# 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."

Section 52 of the Act states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

The Tenant alleged the Landlord was not acting in good faith when he issued the 2 Month Notice. The Landlord called CC as a witness. CC testified that she overheard the Buyers discuss with their agent relocating the staircase in the rental unit. The Tenant stated that this renovation would take a long time to perform and, based on this, the Buyers would not be able to move into the rental unit within a reasonable period of time.

The Landlord testified the Buyers Notice stated the Buyers intended in good faith to occupy the rental unit. The Landlord stated he had no reason to believe the buyers were not acting in good faith. The Landlord stated that the Buyers were living in a hotel pending moving into the rental unit. The Landlord also stated that the Buyers personal possessions were being shipped for delivery to Victoria on February 11, 2022.

It is not sufficient for the Tenant to call a witness to testify they overheard the Buyers discuss with their agent moving the staircase in the rental unit. Evidence that a buyer or buyers intend to have alterations performed on a rental unit they have purchased does not in itself lead to the conclusion that the buyer or buyers are not acting in good faith when they requested the landlord to give notice to the tenant or tenants to vacate the rental unit.

Furthermore, evidence that the buyer or buyers will be performing renovations on the rental unit does not in and of itself lead to the conclusion that the buy or buyers will not be moving into the rental unit in a reasonable period of time and, for that reason, the 2 Month Notice should be cancelled.

I find that, on a balance of probabilities, the Landlords were acting in good faith when they served the Tenants with the 2 Month Notice and that the Buyers are acting in good faith when they state, in the Buyers Notice, that they intend to move into the rental unit. I find the Landlord has provided sufficient testimony and evidence to establish grounds to end the tenancy pursuant to section 49(3) of the Act on the basis that the Buyers intend in good faith to occupy the rental unit pursuant to section 49(3) of the Act. I dismiss the Tenant's application to cancel the 2 Month Notice.

Based on the above, I dismiss the Tenant's application to cancel the 2 Month Notice. I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 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.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an Order of Possession. I find the 2 Month Notice complies with the form and content requirements of section 52.

Section 53 of the Act states:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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
- (a) that complies with the required notice period, or
 - (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Based on the above, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached order on the Tenant.

As the Tenant was unsuccessful in his application, I dismiss their claim for reimbursement of the \$100.00 filing fee they paid for their application.

Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. This Order must be served by the Landlords on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 31, 2022

Residential Tenancy Branch