



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, CNOP, MNDCT, FFT**

Introduction

This hearing was convened as a result of the Tenants' 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 31, 2021 ("First 2 Month Notice") pursuant to section 49;
- cancellation of a Two Month Notice to End Tenancy for Landlord's Own Use dated November 26, 2021 ("Second 2 Month Notice") pursuant to section 49;
- cancellation of a Two Month Notice to End Tenancy for Landlord's Own Use dated December 19, 2021 ("Third 2 Month Notice") pursuant to section 49;
- an order that the Landlords comply with the Act, Residential Tenancy Regulations ("Regulations") and/or tenancy agreement pursuant to section 62;
- an order for monetary compensation from the Landlord for \$100.00 pursuant to section 67;
- an order of possession in favour of the Tenants pursuant to section 54(2); and
- authorization to recover the filing fee pursuant to section 72.

The two Landlords ("SP" and "NP"), the Landlords' legal counsel ("MU") and the two Tenants ("MH" and "MAH") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

MH testified the Tenants served the Landlords separately with the Notice of Dispute Resolution Proceeding and the Tenants' evidence ("NDRP Packages") by registered mail on November 12, 2021. MH submitted a copy of the registered mail receipts and tracking numbers for service of the NDRP Packages on the Landlords. I find that the NDRP Packages were served on each of the Landlords in accordance with sections 88 and 89 of the Act.

MH testified the Tenants served the Landlords with an amendment dated December 7, 2021 ("First Amendment"), in which the Tenants disputed the Second 2 Month Notice, by registered mail on December 11, 2021 but he was unable to provide the tracking numbers for the registered mail service. However, NP acknowledged the Landlords received the First Amendment. I find the First Amendment was served on the Landlords pursuant to section 89 of the Act.

MH testified the Tenants served the Landlords with an amendment dated December 21, 2021 ("Second Amendment"), in which the Tenants disputed the Landlords' Third 2 Month Notice, by registered mail on December 19, 2021 but was unable to provide the tracking numbers for the registered mail service. NP acknowledged the Landlords received the Second Amendment. I find the Second Amendment was served on the Landlords pursuant to section 89 of the Act.

NP testified that the Landlords served an evidence package through the Tenants' mail slot on January 8, 2022. MH acknowledged the Tenants received the Landlords' evidence package. I find that Tenants were served with the Landlords' evidence package pursuant to section 88 of the Act.

Preliminary Matter – Dismissal and Severance of Tenant's Claims

The Tenants have sought an Order of Possession against the Landlord. However, MH admitted at the outset of the hearing that the Tenants are still residing in the rental unit.

Rules 6.2 of the *Residential Tenancy Branch Rules of Procedure* ("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 Landlords where the Tenants are still in possession of the rental unit. I dismiss, without leave to reapply, the Tenants' claim for an Order of Possession against the Landlords.

The Tenants' application states the Tenants are seeking an order for monetary compensation of \$100.00 from the Landlord for reimbursement of the filing fee paid by the Tenants. MH admitted that this claim was in error as the Tenants have already made a specific claim in their application for reimbursement of the Tenants' filing fee. MH requested that the Tenants' application be amended to remove the Tenants' monetary claim for \$100.00. Pursuant to Rule 6.2 I dismiss, without leave to reapply, the Tenants' claim for monetary company for 100.00 from the Landlords.

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 First, Second and/or Third 2 Month Notices should be cancelled. I find the Tenants' 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 First, Second and/or Third 2 Month Notices should be cancelled. Based on the above, I dismiss the Tenants' claim that the Landlords comply with the Act, Regulations and/or tenancy agreement with leave to reapply.

Issues to be Decided

- Are the Tenants entitled to cancellation of the First 2 Month Notice?
- Are the Tenants entitled to cancellation of the Second 2 Month Notice?
- Are the Tenants entitled to cancellation of the Third 2 Month Notice?
- Are the Tenants entitled to recover the filing fee for their application?
- If the Tenants are not entitled to cancellation of the First, Second and/or Third 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 Tenants' application and my findings are set out below.

The tenancy commenced on September 1, 2014 for a one-year fixed term ending August 31, 2015 with rent of \$2,000.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$1,000.00 by August 15, 2014. SP stated the Tenants paid the security deposit and the Landlords were holding the security deposit in trust for the Tenants. SP stated the current rent is \$2,250.00 and there are no rental arrears. MH acknowledged the foregoing terms of the tenancy were accurate.

SP testified the First 2 Month Notice was served through the Tenants' mail slot on October 31, 2021. SP stated the Second 2 Month Notice was served through the Tenants' mail slot on November 26, 2021. SP stated the Third 2 Month Notice was served through the Tenants' mail slot on December 19, 2021. MH acknowledged that the Tenants had received the First, Second and Third 2 Month Notices on the dates stated by SP. I find the Landlord served the First, Second and Third 2 Month Notices in accordance with section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenants are deemed to have received the First 2 Month Notice on November 3, 2021, the Second 2 Month Notice on November 29, 2021 and the Third 2 Month Notice on December 22, 2021.

SP stated that he was unemployed for a lengthy period of time result in financial difficulties for him. He stated there were also family issues that were causing the Landlords' serious concerns. He stated that he approached the Tenants to see if they would consider entering into another tenancy agreement that would allow the Landlords to raise the rent. SP stated that he was employed again and any prior discussions with the Tenants about raising the rent was not a consideration when the Landlords served the Tenants with the 2 Month Notices for use by one of their children. SP admitted that he attempted to discuss ending the tenancy with the Tenants for the use by one of the Landlords' children but the Tenants had refused. However, due to COVID, SP stated the Landlords deferred taking any action to end the tenancy for use of the rental unit by their daughter until November 2021.

MH testified it was the Tenants' position that the Landlords were not acting in good faith when the Landlords served the First, Second and Third 2 Month Notices on the Tenants. MH submitted a very lengthy text message ("Text Message") between him and SP in which SP states that he is going out to pay the taxes and that SP thought Landlords and Tenants should sit down to re-negotiate a new contract with increased rent. MH stated that landlords were not permitted to raise rents at the time of the Text Message. MH states that SP became very combative with the Tenants after the Tenants refused to meet with SP to discuss a new tenancy agreement. In addition, MH submitted that the Tenants were having trouble in finding another rental unit and they needed more time to move.

Analysis

SP testified the Landlords served the First 2 Month Notice through the Tenants' mail slot on October 31, 2021. MH Tenant acknowledged this service on the Tenants. I find the Landlords served the First 2 Month Notice through the Tenants' mail slot on October 31, 2021. Pursuant to section 90, the Tenants were deemed to have received the First 2 Month Notice on November 3, 2021. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the First 2 Month Notice, being November 18, 2021. The Tenants filed their application for dispute resolution to dispute the First 2 Month Notice on November 6, 2021. I find the Tenants made their application to dispute the First 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

SP testified the Landlords served the Second 2 Month Notice through the Tenants' mail slot on November 26, 2021. MH acknowledged this service on the Tenants. I find the Landlords served the First 2 Month Notice through the Tenants' mail slot on November 26, 2021. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the First 2 Month Notice, being December 11, 2021. The Tenants filed their First Amendment to dispute resolution to dispute the Second 2 Month Notice with the RTB on December 9, 2021. The Tenants submitted registered mail receipts to corroborate they served each of the Landlords with the First Amendment on the Landlords on December 11, 2021. I find the Tenants filed the First Amendment to dispute the Second 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

SP testified the Landlords served the Third 2 Month Notice through the Tenants' mail slot on December 19, 2021. MH acknowledged this service on the Tenants. I find the Landlords served the First 2 Month Notice through the Tenants' mail slot on

December 19, 2021. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the Third 2 Month Notice, being December 11, 2021. The Tenants filed Second Amendment to dispute resolution to dispute the Third 2 Month Notice on December 21, 2021. MH submitted registered mail receipts to corroborate they served each of the Landlords with the Second Amendment on December 21, 2021. I find the Tenants filed the Second Amendment to dispute the Third 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.

MH testified that pages 3 and 4 of the First 2 Month Notice were missing when they received it. SP admitted that the Landlords did not attach pages 3 and 4 to the First 2 Month Notice when it was served on the Tenants. As a result, the First 2 Month Notice did not comply with the form and content requirements of section 52 of the Act. Based on the above, I cancel the First 2 Month Notice.

MH alleged the Landlords were not acting in good faith when they issued the First, Second and Third 2 Month Notices. MH submitted the Landlords were evicting them as they refused to agree to pay increased. MH stated the Text Message was evidence the Landlords were not acting in good faith. Although SP testified he discussed with the Tenants the possibility of entering into a new tenancy agreement to raise the rent, a request by a landlord to a tenant to have discussions about entering into a new tenancy agreement and an increase in rent, does not itself establish that a landlord is not acting in good faith if the landlord subsequently serves the tenant with a One Month Notice to End Tenancy. MH also testified the Tenants were having trouble in finding another rental unit. However, the Act does not list hardship as a ground to dispute a notice to end tenancy. I find there is insufficient evidence from the Tenants to establish that the Landlords do not have a "good faith" intention that their daughter will be occupying the residential property.

SP testified he had been unemployed for a lengthy period of time and that he was experiencing financial difficulties at the time he raised the issue of the amount of rent the Tenants were paying. However, he testified that he was employed again and that the issue of seeking increased rent was not a factor in the Landlords' decision to serve the Tenants with the 2 Month Notices for use of the rental unit by daughter. I find SP's testimony was very candid regarding the circumstances of the child who SP testified will be moving into the rental unit. I accept SP's testimony in its entirety.

I find that, on a balance of probabilities, the Landlords were acting in good faith when they served the Tenants with the First, Second and Third 2 Month Notices for use by one of their children. I find the Landlords have provided sufficient testimony

and evidence to establish grounds to end the tenancy pursuant to section 49(3) of the Act on the basis that a close family member of the Landlord intends in good faith to occupy the rental unit pursuant to section 49(3) of the Act. I dismiss the Tenants' application to cancel the Second and Third 2 Month Notices.

The Tenants were successful in their application to have the First 2 Month Notice cancelled. However, I have upheld the Second and Third 2 Month Notices. I must now consider whether the Landlords are 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 tenants' 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 Second and Third 2 Month Notices comply 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.

It was unnecessary for the Landlords to serve the Tenants with the Third 2 Month Notice as the effective date of the Second 2 Month Notice was automatically deemed to be the earliest date that complies with subsection 49(2)(b) of the Act. In the case of the Second 2 Month Notice, section 49(2)(b) provides the effective date of the notice is automatically deemed to be January 31, 2021. However, the Third 2 Month Notice specified an effective date of February 28, 2022. Issuing an Order of Possession for January 31, 2021 based on the Second 2 Month Notice would be prejudicial to the Tenants who may have already relied upon the effective date of February 28, 2022 specified in the Third 2 Month Notice. Accordingly, I order the Tenants provide the Landlords with vacant possession of the rental unit effective at 1:00 pm February 28, 2022, after service on the Tenants.

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

Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlords are provided with an Order of Possession effective on February 28, 2022. This Order must be served by the Landlords on the Tenants as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenants 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 27, 2022

Residential Tenancy Branch