Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, 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 the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dated October 14, 2021 ("2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee pursuant to section 72.

The Landlord and one of the Tenants ("RP") attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

RP testified the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on the Landlord by registered mail but RP stated he could not locate his mail receipt and tracking number for the mailing of the NDRP Package to the Landlord. However, the Landlord acknowledged he received the NDRP Package by registered mail on November 5, 2021. Accordingly, I find that the NDRP Package was served on the Landlord in accordance with sections 88 and 89 of the Act.

The Landlord stated that he served his evidence on the Tenants by registered mail but could not recall the date or provide a registered mail tracking number. RP stated the Tenants' mail gets mixed up at the front door and that the Tenants' mail often goes to the lower unit and vice-versa. However, it was established that the Tenants did receive the Landlord's evidence and RP was prepared to proceed with the hearing. I find that the Landlord's evidence was sufficiently served on the Tenants pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Removal of Infant Tenant as a Respondent

At the commencement of the hearing, RP stated that one of the applicants ("AP") was an infant who resides in the rental unit.

Residential Tenancy Branch Rule of Procedure 4.2 states:

> **4.2 Amending an application at the hearing**
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> 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 did not object to the Tenant's request for an amendment, I withdrew the name of the infant child ("AP") as an applicant to the Tenants' application.

Preliminary Matter – Rental Unit Vacated by Tenants

At the commencement of the hearing, I was advised by the parties that the Landlord had served the Tenants with the 2 Month Notice. The 2 Month Notice required the Tenants to vacate the rental unit on December 31, 2021. RP stated that, after the Tenants made their application for dispute resolution to dispute the 2 Month Notice, the Tenants served the Landlord with a notice, pursuant to section 50(1)(a) of the Act, to vacate the rental unit on December 15, 2021 rather than the effective date of December 31, 2021 specified in the 2 Month Notice. The parties agreed the Tenants did in fact vacate the rental unit on December 15, 2021.

When I was provided with the foregoing information, I advised RP that the Tenants' claim for cancelation of the 2 Month Notice or, if his application was dismissed, consideration of whether the Landlord was entitled to an Order of possession, were now moot. Notwithstanding this, RP insisted that I hear his testimony and submissions regarding cancellation of the 2 Month Notice. The Landlord advised that he was willing to proceed with the hearing. Accordingly, to ensure procedural fairness and allow RP to have the opportunity to be heard, I proceeded with the hearing so that the parties could be heard and present their testimony, submissions and evidence so that the Tenants' application could be adjudicated on its merits.

Issue(s) to be Decided

Are the Tenants entitled to:

- cancellation of the 2 Month Notice?
- recover the filing fee of the Tenants' application from the Landlord?
- if the Tenants' application is dismissed, 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 parties agreed the fixed term tenancy commenced on August 1, 2021 for one year ending on August 1, 2021 with rent of $2,400 payable on the 1st of each month. The Tenants were to pay a security deposit of $1,200.00 and pet damage deposit of $1,200.00. The Landlord confirmed that the security and pet damage deposits were paid by the Tenants and that he was holding them in trust for the Tenants.

The Landlord stated he served the 2 Month Notice on the Tenants by registered mail on October 15, 2021. The Landlord submitted the registered mail receipt and tracking number to corroborate his testimony. I find that the 1 Month Notice was served on the Tenants pursuant to section 88 of the Act. Based on section 90 of the Act, I find that the Tenants were served with the 1 Month Notice on October 20, 2021.

The Landlord testified that he was originally the agent for his father who was the owner of the rental unit. However, the Landlord testified his father died in December 2017. He stated that he was appointed the executor of his father's estate on May 12, 2021. The Landlord submitted a copy of the grant of Probate to corroborate his testimony.

The Landlord testified the rental unit was sold pursuant to a purchase and sale agreement. The Landlord stated that the purchasers served him written notice requesting that the Landlord serve the Tenants with a Two Month Notice to End Tenancy. The Landlord submitted a copy of the written notice from the purchasers to corroborate his testimony.

RP testified that, when the Tenants considered renting the rental unit, they were told by the Landlord that he had inherited the rental unit from his father. RP stated that around one month after the tenancy commenced, they discovered advertisements for the sale of the rental unit. RP stated that their daughter is immuno-suppressed and at high risk from COVID-19. RP stated that notices for access to the rental unit were often given by text or email or the agent would simply show up at the door to the rental unit. RP stated that there were numerous viewings by prospective purchasers, all of which placed his daughter at significant risk. RP stated that it was his view that the 2 Month Notice did not provide sufficient time to locate suitable replacement residential housing. RP stated that he received numerous “nasty” letters from the Landlord’s mother stating that she was the owner of the rental unit. RP stated that it was the Tenants’ opinion that they were entitled to substantial compensation from the Landlord.

The Landlord denied that he was the owner of the rental unit and stated that the rental unit was bequeathed to his mother in his father’s will.

Analysis

Rule 6.6 of the *Rules Residential Tenancy Branch Rules of Procedure* states:

6.6 The standard of proof and onus of proof

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.

Pursuant to Rule 6.6 that Landlord must prove the reason he wishes to end the tenancy when the Tenants have applied to cancel the 2 Month Notice.

Sections 49(5) and 49(8) of the Act state:

> 49(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.
>
> (8) A tenant may dispute
>
> (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
>
> (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The Landlord served the Tenants with the 2 Month Notice on October 15, 2021 by registered mail. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 2 Month Notice on October 20, 2021. Pursuant to section 49(8), the Tenants had until November 4, 2021 to make an application for dispute resolution to dispute the 2 Month Notice. The records of the Residential Tenancy Branch (“RTB”) indicate the Tenants made their application on November 2, 20201. I find the Tenants made their application within the 15-day dispute period allowed pursuant to section 48(8) of the Act.

Section B of *Residential Tenancy Policy Guideline 2A, states in part:*

> **B. GOOD FAITH**
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> 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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).
>
> If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.
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> If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.
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> If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
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> The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive

The undisputed testimony of the Landlord was that he entered into a purchase and sale agreement with two purchasers (the “Purchasers”) for the sale of the rental unit. The Landlord submitted a signed copy of the purchase and sale agreement to corroborate his testimony. I find that all of the conditions on which the sale depended were satisfied. To corroborate his testimony, the Landlord submitted a signed copy of the request from

the Purchasers that he serve notice on the Tenants to vacate the rental unit as the Purchasers intend to occupy the rental unit. I find the Purchasers requested the Landlord in writing to give notice to end the tenancy on the grounds that the Purchasers are individuals, and the Purchasers intend in good faith to occupy the rental unit. As such, I find the Landlord and Purchasers are acting in good faith as required by section 49(5) of the Act.

I find that Landlord's 2 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice, identifies the names of the Purchasers and their address and the 1 Month Notice has been signed and dated by the Landlord. The fixed term of the tenancy ended prior to the effective date of the 2 Month Notice on December 31, 2021.

If find the RP has not provided any testimony or evidence that:

(a) the Landlord did not enter into the purchase and sale agreement in good faith to sell the rental unit to the Purchasers:
(b) any conditions of the sale between the Landlord and Purchasers have not been satisfied;
(c) the Purchasers did not give written notice to the Landlord the Purchasers to end the tenancy on the grounds that the Purchasers are individuals or that the Purchasers does not intend to in good faith to occupy the rental unit; or
(d) the form or content of the 2 Month Notice was deficient in any manner.

I find the Landlord has met the burden of proof, on a balance of probabilities, that the 2 Month Notice was issued for a valid cause. Based on the above, I dismiss the Tenants' application in its entirety.

RP raised issues regarding the Landlord paying the Tenants compensation for the period December 16 through December 31, 2021 pursuant to section 50 of the Act, the return of the security and pet damage deposits paid by the Tenants to the Landlord and monetary compensation for other alleged breaches under the tenancy agreement. I advised RP that the Tenants may contact the Contact Centre at the RTB to obtain information for making applications, and relevant policy guidelines and other procedures respecting claims for the return of security and pet damage deposits and other alleged claims compensation.

Order of Possession:

As I have dismissed the Tenants' application, I must now consider whether the Landlord is entitled to an Order of Possession. Section 55(1) 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.

I have already found the 2 Month Notice meets the form and content requirements of section 52 of the *Act* and I have dismissed the Tenants' application. Based on the above, pursuant to section 55(1) the Landlord is entitled to an Order of Possession for the Tenants to deliver up vacant possession of the rental unit by December 31, 2021. However, as the parties agreed that the Tenants vacated the rental unit on December 15, 2021, granting an Order of Possession to the Landlord is now moot. I therefore decline to issue an Order of Possession to the Landlord.

This decision is without prejudice to any other claims that may be made by the parties against each arising from the tenancy pursuant to the provisions of the Act or tenancy agreement or to any claims relating to the security deposit or pet damage deposit paid by the Tenant.

As I have dismissed the Tenants' application, the Tenants are not entitled to recover filing fee of their application.

Conclusion

The Tenants application is dismissed in its entirety.

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 7, 2022

Residential Tenancy Branch