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 Tenant's application for dispute resolution under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of the Landlord's Two Month Notice for Landlord's Use of Property dated October 30, 2021 ("2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee pursuant to section 72.

The Tenant ("FM"), the Tenant's son ("MM"), the Landlord, the Landlord's son ("NC") and the Landlord's interpreter ("HC") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

FM testified he served the Notice of Dispute Resolution Proceeding and his evidence ("NDRP Package") on the Landlord by registered mail on November 16, 2021. FM submitted a registered mail receipt and tracking stub to corroborate his testimony on service of the NDRP Package on the Landlord. I find the NDRP Package was served on the Landlord in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Removal of an Applicant

At the outset of the hearing, the Landlord stated MM was not a tenant on the tenancy agreement. FM confirmed that MM was his son and that he was living with him. FM stated he thought that, as MM was living in the rental unit, he was a tenant. I told FM that a person who lives in a rental unit with the tenant(s) named in the tenancy agreement is not a tenant but is generally referred to as an occupant. As both FM and

NC agreed that MM was not a tenant under the tenancy agreement, FM requested that I amend the application to remove MM as an applicant.

Rules 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") 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 could reasonably have anticipated a request for an amendment to an application to remove a person who is not a tenant on the tenancy agreement, I amended the application to remove MM as an applicant on the application.

Preliminary Matter – Service of Landlord's Evidence on FM and MM

NC testified he believed the Landlord served FM and MM with two separate evidence packages personally on December 21, 2021 and on June 19, 2022. NC submitted signed Proofs of Service to corroborate his testimony. FM acknowledged receipt of the Landlord's first and second evidence packages but he disputed the method of service and dates of service of those packages. FM stated he received the first evidence package in his mailbox on January 1, 2022 and the second evidence package in his mailbox on January 19, 2022.

Rule 3.15 of the "RoP states:

> **3.15 Respondent's evidence provided in single package**
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> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's

> evidence must be received by the applicant and the Residential Tenancy Branch *not less than seven days before the hearing.*
>
> [emphasis in italics added]

As the RC and FM were unable to explain the discrepancy in the dates of service of the Landlord's two evidence packages, I prefer to use the method and dates of service stated by FM, namely in FM's mailbox on January 1, 2022 and January 19, 2022. Pursuant to section 90 of the Act, FM was deemed to have received the Landlord's two evidence packages on January 4, 2022 and January 22, 2022. Accordingly, the Landlord's two evidence packages were received by FM seven or more days before the date of this hearing. As service of the Landlord's two evidence packages complied with the requirements of Rule 3.15, I find the Landlord's two evidence packages are admissible for the purposes of this hearing.

Preliminary Matter – Use of Interpreter by Landlord

NC stated he was the son of the Landlord. NC stated that the Landlord did not speak English very well and that he would be translating for the Landlord. When I asked NC how fluent he was in English and in his father's native tongue, NC stated he was "somewhat" fluent in Punjabi. I expressed concerns regarding NC translating for the Landlord as I wanted to be confident that there would be an accurate translation between the Landlord, NC, FM and myself. I told NC that it would be necessary for me to adjourn the hearing and request the Landlord arrange for a competent interpreter for the adjourned hearing. NC then stated his brother ("HC") was fluent in English and Punjabi and that he could get him to come into the room in which NC and the Landlord were located. I allowed HC to enter the room. I asked HC if he was fluent in English and Punjabi and he stated he was fluent in both languages. FM did not object to HC acting as translator for the Landlord. I continued with the hearing.

Issues to be Decided

Is FM entitled to:

- cancellation of the 2 Month Notice?
- recovery of the filing fee for the Tenant's application from the Landlord?
- if FM is unsuccessful in his application, 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 FM's application and my findings are set out below.

RC submitted a copy of the Tenancy agreement between the Landlord and FM dated May 1, 2018. RC testified the tenancy commenced on May 1, 2018, on a month-to-month basis, at rent of $884.00 payable on the 1st day of each month. RC stated FM paid a security deposit of $335.00 that the Landlord was still holding in trust on behalf of FM. The Landlord stated the rent was now $906.00. NC stated that, if an Order of Possession was granted in favour of the Landlord, then it would be acceptable to the Landlord if it required FM to vacate the rental unit by February 15, 2022.

FM testified the information provided by RC regarding the terms of the tenancy were correct. However, FM stated he and the Landlord verbally agreed to an increase of rent from $884.00 to $906.00. FM stated the increase in rent had been made without the Landlord serving FM with a Notice of Rent Increase as required by the Act.

RC stated he served the 2 Month Notice on FM in-person on October 30, 2021. FM acknowledged he had been served with the 2 Month Notice on October 30, 2021. I find FM was served with the 2 Month Notice in accordance with section 88 of the Act.

RC stated he would be moving into the rental unit with his wife and two children of one and three years of age. RC stated he and his family were currently living in the Landlord's home. RC stated there are a total 10 people living in the Landlord's home. RC stated overcrowding in the home was causing a lot of anxiety and depression for the Landlord and RC' mother. RC stated the Landlord purchased the rental unit as an investment and for his children to move into in the future. The Landlord, who spoke in English, affirmed that he was acting in good faith when he served the 2 Month Notice on FM so that RC and his family could use the rental unit. RC testified that he intends in good faith to move into the rental unit with his family.

FM submitted an undated tenancy agreement ("Replacement Tenancy Agreement"), signed by the Landlord but not FM, in which the rent was stated to be $906.10 per month plus 40% of BC Hydro commencing on May 1, 2019. The Tenant stated he verbally agreed to the rent increase of $906.00 because MM was living in the rental unit with him but he refused to sign the Replacement Tenancy Agreement because

electricity was included in his existing tenancy agreement. FM stated that ever since he refused to sign the Replacement Tenancy Agreement, the Landlord has been pursuing ways to evict him. FM stated that the Landlord has failed to perform repairs to the rental unit when required including loss of hot water.

FM submitted a letter dated April 30, 2021 ("Notice Letter") from NC which stated, in part:

> This notice is to inform you the landlord will be making major renovations to the whole house and therefore needs the complete house vacated to do that work. The landlord, hereby is providing you with 2 months notice to move out of the rental unit by June 30, 2021.

FM stated that, during the first week of May, a client of his saw a Craigslist advertisement which offered the basement unit of the residential premises for rent. FM stated the basement unit was rented to new tenants on May 15, 2021. FM stated that, although the Landlord provides receipts for rent when requested and when he does issue a receipt, it doesn't state it is from the Landlord or that it relates to FM's rental unit. FM also stated that the other two rental units on the residential property were illegal suites.

FM stated that, after the Landlord served him with the Notice Letter, the Landlord served him with a Four Month Notice to End Tenancy for Renovations ("4 Month Notice"). FM testified the 4 Month Notice, served on him in June 2021, stated the tenancy was ending because the Landlord required vacant possession so that the Landlord could perform renovations on the rental unit. FM stated that, contrary to needing the whole house as stated in the Notice Letter, the 4 Month Notice only required his rental unit to be vacated since the Landlord had already rented the downstairs suite on May 15, 2021.

RC stated the Landlord served the 4 Month Notice on FM so as to give FM additional time, particularly during the COVID pandemic, to find alternative accommodations and vacate the rental unit. RC stated the Landlord did not understand the 4 Month Notice did not comply with the Act where a child is moving into the rental unit, even though the rental unit requires major renovations. RC stated FM is wrong when he testified the Landlord was seeking to evict all the tenants in the residential premises. RC stated that the Landlord was seeking a new tenant for the basement suite in May 2021 which is corroborated by FM's own testimony that a friend of his viewed the basement unit. RC stated that he and his

family would only be moving into the renal unit occupied by FM. RC denied the allegations of FM that the Landlord was not acting in good faith.

RC stated the electrical utility bill was $1,309.08 for the period January 17, 2019 to March 18, 2019. RC stated FM is operating a business of computer repair and sales from his rental unit. RC stated it was the Landlord's view that FM was using excessive amounts of electricity as a result of the operations of FM's business. RC stated the Landlord has been trying to resolve the issue of the electrical consumption with the tenants of the residential premises.

FM stated he only repairs computers on a part time basis and his business did not require excessive amounts of electricity as claimed by the Landlord. FM stated there are tenants living in an illegal rental unit, consisting of a shed, located on the residential premises. FM stated that, as the shed was not insulated, the tenants are using two space heaters to heat the unit and the heaters are using significant amounts of electricity.

RC submitted a copy of a webpage that RC claimed was FM's business in which it advertises "We also sell desktops and laptops at amazing prices.". RC submitted that FM is using far more electricity than FM has admitted. RC stated FM is conducting a business without the Landlord's consent and without a business license which is putting the Landlord's property at risk.

Analysis

RC stated he served the 2 Month Notice on FM in-person on October 30, 2021. FM is deemed to have been served on October 30, 2021. Pursuant to section 49(8)(a) of the Act, FM had 15 days to dispute the 2 Month Notice, or November 15, 2021. The records of the Residential Tenancy Branch disclose FM filed his application for dispute resolution to dispute the 2 Month Notice on November 11, 2021. I find FM made his 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 ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A 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.

FM's submissions the 2 Month Notice should be cancelled because the Landlord is not acting in good faith are based on essentially three arguments. The first argument is the Landlord required FM to pay increased rent even though the Landlord did not serve him with a Notice of Rent Increase when the rent went from $$884.00 to $906.00. However, the non-compliant rent increase occurred in 2019 and the Tenant did not provide any evidence, or call any witnesses, to corroborate his testimony that the Landlord has been continuing to press FM for pay more rent since 2019. Furthermore, evidence that a landlord has raised the rent or attempted to raise the rent is not in itself conclusive of whether a landlord is acting in good faith when serving the 2 Month Notice or that a close relative of the landlord does not intend in good faith to move into the rental unit. The Tenant did not dispute RC's testimony that RC and his family are living in the Landlord's home with six other people or that RC does not intend in good faith to move into the rental unit. I do not

find FM's evidence and submissions that the Landlord is attempting to end the tenancy because FM won't pay addition rent to be persuasive.

The second argument is FM was served with the Notice Letter which stated FM had to vacate the rental unit so that the Landlord could perform renovations on all of the house. FM stated the Landlord then re-rented the lower unit on May 15, 2021. FM stated the Landlord then served him with the 4 Month Notice that stated the Landlord required vacant possession of only FM's rental unit. FM submitted that this was evidence that the Landlord had lied to him regarding the reason for the eviction stated in the Notice Letter served on him in May and that this was evidence the Landlord was not acting in good faith when he served FM with the 2 Month Notice. However, FM did not dispute RC testimony that RC and his family were living in the Landlord's home or that there were a total of 10 people living in the Landlord's home. RC stated he and his family intend to use the upper rental unit which is currently occupied by FM and are not seeking occupancy of the lower rental unit. I am not persuaded by FM's argument that the Landlord was not acting in good faith when he served the 2 Month Notice for use of RC when the Tenant did not challenge RC's affirmed testimony on his family's current living situation in the Landlord's crowded home or that RC intends in good faith to occupy the rental unit with his family.

FM's third submission relates to the Landlord not complying with the requirements of the Act such as repairs, automatically giving FM a receipt for rent paid in cash and that there are two illegal rental units on the residential premises. Failure by a landlord to complying with the requirements of the Act or of municipal bylaws is not determinative of whether a landlord is acting in good faith when serving a Two Month Notice on a Tenant. In the present case, I am not persuaded by FM's testimony and evidence that the Landlord may not be in compliance with the provisions of the Act or municipal bylaws leads to the conclusion that the Landlord is not acting in good faith.

When reviewing the totality of the evidence before me, I find FM has provided little supporting evidence to establish the Landlord was not acting in good faith when he served the 2 Month Notice on FM. Furthermore, I find FM has not provided any testimony or evidence to support a finding that RC does not intend in good faith the occupy the rental unit with his family. Based on the above, I find, on a balance of probabilities, the Landlord was acting in good faith when she served FM with the 2 Month Notice and I find a close family member of the Landlord (RC) intends, in good faith, to occupy 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 a child intends in good faith to occupy the rental unit pursuant to section 49(3) of the Act. I dismiss FM'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
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> (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 at 1:00 pm on February 15, 2022. The Landlord is provided with this Order in the above terms and FM must be served with this Order as soon as possible. Should FM fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

As FM was not successful in his application, I dismiss his claim for reimbursement of the $100.00 filing fee he paid for his application.

I take this opportunity to remind the parties of their obligations and rights under the Act. Section 49(4) of the Act provides the landlord must pay the tenant, in addition to the amount payable under subsection 51(1) of the Act, an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the rental unit, 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. In the present case, FM the has the option of making an application for dispute resolutionto seek from the Landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement in the event the Landlord's child does not use the rental unit for at least 6 months' duration, beginning within a reasonable period after the tenancy ends.

Conclusion

FM's application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective at 1:00 pm on February 15, 2022. The Landlord is provided with this Order in the above terms and FM must be served with this Order as soon as possible. Should FM fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: February 6, 2022

Residential Tenancy Branch