Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, AAT, RP, RR, PSF, FFT, CNC**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
3. An Order for the Landlord to allow access to the unit for me and/or my guests pursuant to Section 30 of the Act;
4. An Order for the Landlord to make repairs to the unit pursuant to Section 32 of the Act;
5. An Order for a rent reduction for repairs, services or facilities agreed upon but not provided pursuant to Section 65(1)(b) of the Act;
6. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act; and,
7. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, JC, and Agent, JC, and the Tenants, MH and NB, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord stated they served the Tenants with the Two Month Notice via registered mail on August 31, 2021. The Tenants stated they received the Two Month Notice by registered mail, and it was personally served on August 30, 2021. I find that the Two Month Notice was served on the Tenants on August 30, 2021 pursuant to Section 88(a) of the Act.

The Landlord served the Tenants with the One Month Notice via registered mail on October 5, 2021 (the "One Month Notice"). The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenants confirmed receipt of the One Month Notice by registered mail. I find that the One Month Notice was deemed served on the Tenants on October 10, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenants served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on September 29, 2021 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package by registered mail. I find that the Landlord was deemed served with the documents for this hearing five days after mailing them, on October 4, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

A first dispute resolution hearing was booked for January 25, 2022; however, the assigned Arbitrator was unable to conduct the hearing on that date. This hearing was rescheduled for February 7, 2022.

Preliminary Matter

Prior to the parties' testifying, I advised them that Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants indicated different matters of dispute on their application, the most urgent of which is the claim to cancel the One Month Notice and the Two Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the One Month Notice, the Two Month Notice and the claim for recovery of the application filing fee at

this proceeding. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
2. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
3. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
4. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties agreed this tenancy began as a fixed term tenancy on August 15, 2020. The fixed term ended August 14, 2021 and the tenancy continued on a month-to-month basis. Monthly rent was advertised for $3,000.00 payable on the 15th day of each month for the entire suite. A security deposit of $1,500.00, and pet damage deposit of $1,500.00 were collected at the start of the tenancy and are still held by the Landlord. The Tenants later found out that the rental unit came with a tenant who now sublets under the current Tenants.

The reason noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was November 14, 2021.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the tenant or a person permitted on the residential property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- put the landlord's property at significant risk

Further details provided by the Landlord state details for cause are:

> *The tenants made wood-burning outdoor fire pits on the deck of level 2 of the house as reported by tenants on Sep 29, 2020 and May 7, 2021. The fire truck came to check. This against the City bylaw of [city], as outlined in Fire Protection and Emergency Response Bylaw and put the landlord's property at significant risk.*
>
> *The tenants keep significantly interfered with or unreasonably disturbed neighbours.*
>
> *The tenants does not take care of the Poop of the Dog in the property yard even in neighbour's yard that seriously jeopardized the health and safety or lawful right of another occupant, the landlord, and neighbours.*

The effective date of the One Month Notice was November 14, 2021.

The Landlord testifies that this is the only property she and her family own in Canada. On November 11, 2021, her husband returned from their home country and they want their home back. Her husband is 68 years old, is not in good health and needs a better place to stay for his health. Currently they are renting a basement suite in another area of the city, but this tenancy ends on March 20, 2022. The Landlord did not provide evidence that she must vacate this rental unit on that date, she only provided page one of that tenancy agreement.

The Landlord testifies that her daughter who will be graduating in Toronto, is coming back into town in April 2022. The Landlord states that her son who is in jr. high school is going to move back to the family home. He will begin taking a bus to school in his sr. high school years which the Landlord states is a 35 minute car drive away.

The Landlord said they plan to move back into their home March 20, 2022 when the other tenancy ends. She stated they will be changing the utilities into their name. Where they are living now, it is furnished with their landlord's items. They will just need to pack their small belongings into their SUV and move back into their home.

The Tenants do not believe that the Landlord has the good faith intention to occupy the rental unit. At present, the Tenants state, the Landlord maintains the upper unit in the rental home and her husband does stay there. The Tenants testified that the Landlord uses the upper unit often. The Tenants said the Landlord has installed appliances in the

upper unit, e.g. a hot plate, a washing machine and an induction oven. The Landlord testified that there is no kitchen or laundry facilities on the upper floor.

In the documentary evidence, application says, “sharing house”, the Tenants state that they are living in the house and each party has a separate unit. They do not share a kitchen or bathrooms.

The Tenants submit that replies to their emails from the Landlord demonstrate that the Landlord does not have the good faith intention to move into the rental unit, those emails state after the Tenants emailed the Landlord and the Landlord’s daughter about cleaning and maintaining the balcony (which they are not allowed to get wet and which requires staining), the Landlord’s daughter writes in May 2021, “*Thanks for bringing up the stain issue and offering to help….My dad can also take care of the painting in the summer if you are busy.*” The Tenants state that also, another example that the Landlord does not have the good faith intention, in response to an email about bathroom updates from the Tenants, the Landlord’s daughter writes, “*Thanks for the update and for all your work, it looks great! When my dad comes back from China he can also help with the renovation if needed.*”

In the Tenants’ documentary evidence, they state that the Landlord’s husband, on August 27, 2021, “*reiterates that the railings are required for the tenants’ safety (contractor installs railings throughout the rental unit in order to close a previous building permit with the city) and that [the Landlord’s husband] is willing to remove them once the inspector confirms the building is up to code. He tells the tenants that if they withhold rent (because of the issues with the railings), ‘we have no choice but to consider termination of the tenancy’*.” The Tenants assert this demonstrates that the Landlord had not yet considered ending their tenancy and also that the Landlord and the Landlord’s husband have no qualms being dishonest to city inspectors.

The Tenants submitted in their documentary evidence, a kind of sworn letter written by their subletter. They asked the subletter questions, and he provided answers:

> *3. Did the landlord say why she was evicting the tenants?*
>
> *When I asked the landlord “what happened”, she said she was upset with an email set to her. I asked what it was about and she said there was something about “threatening” in it but did not explain further. She often uses a*

translation service to communicate and "threat" translates to a very strong word.

4. What was she referring to?

The tenants later showed me the email (to the Landlord's husband) she was referring to. It says, "You threatened to evict us for using our fireplaces, even after having them inspected." Because I know how negative the word "threaten" is in [their language] (it is a word you use to start a fight, not fix a problem), I would not use that word. However, I was witness to [the Landlord's husband] saying if the tenants used the fireplaces, he would evict them. Since this fall, we have been allowed to use the fireplaces.

5. Did the landlord say anything else about the tenants?

She said, "I always treated NB and MH very well. Why do they say they got threatened by us?" She also said the email was too long and very serious which I know from experience is uncommon in [our country] except for business emails. For example, if I want to discuss something with [the Landlord's husband], I will send him a short message then talk to him in person.
…
9. Did the landlord say she or her husband were moving into the unit?

No, she never told me that, either via email, WeChat, in person, on the phone, or any other way. To this day, I only know because the tenants showed me the reason for the eviction notice.

The Tenants state that the round trip from the rental unit to get the student son to school is 80 kilometers. In the Tenants' documentary evidence, they shared an email dated March 23, 2021, which states "*we will be moving closer to [Landlord's son's] school today. The long commutes haven't been good for my health, and the doctor suggested that I get some rest.*" The Tenants assert that it is too long to take a bus from the rental unit, it would take one hour to one hour fifty minutes. The Landlord states the bus ride is only 35 minutes.

The Tenants' documentary evidence points out other aspects of discrepancy, for instance:

- the Landlord only wants two names on the tenancy agreement to avoid increased insurance premiums;
- there was an overlap period between the current Tenants and the previous tenants;
- there is a wine cellar that is accessible through the Tenants' rental unit, and the Tenants agreed the Landlord could have access with reasonable notice provided to the Tenants – the Landlord does not provide reasonable notice;
- the Tenants agreed to pay 90% of the utilities because they were told the Landlord's family would hardly occupy the upper unit. The Landlord's family has lived there full-time, or for extended periods of time. The utilities split has been renegotiated; and,
- the Tenants discovered that the Landlord has used the Tenants' internet without their knowledge or consent. The Landlord now contributes to the cost of the internet.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: landlord's use of property

49 *(1) In this section:*

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

…

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

…

(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

…

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

…

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] …

(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

…

The Landlord served the Two Month Notice on August 30, 2021. I find that the Two Month Notice complied with the form and content requirements specified in Section 52 of the Act. The Tenants applied for dispute resolution on September 12, 2021, therefore, I find they filed with the 15 day time limit after receiving the Two Month Notice.

The Tenants made the claim that they did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord,

Purchaser or Close Family Member, assists parties understand issues that are likely to be relevant in this regard.

B. Good Faith

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.

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. The <u>onus is on the landlord</u> to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive. (emphasis mine)

To support that the Landlord has the good faith intention that she will be occupying the rental unit, the Landlord testified that her current rental unit tenancy ends on March 20, 2022. However, that tenancy, even if a fixed term tenancy, can continue on a month-to-month basis at the end of the term. The Landlord has not proven that she <u>must</u> move out on March 20, 2022. The Landlord testified that she will be changing the utilities into her own name when they take over the rental unit. I agree, the Landlord will have to change the utilities into her name when she takes over possession of the rental unit. That goes without saying. The Landlord also testified that her son will be taking a bus from the rental unit to his school on the west side of the city. She asserts it is a 35 minute bus ride. The Tenants dispute this, and I do agree with the Tenants that the amount of time for transit to transport someone from the rental unit to the son's school is more than double the amount of time the Landlord is claiming. The Landlord has not provided more, and more is needed to prove that she has the good faith intention that she will be occupying the rental unit when the Tenants leave. I find that the Landlord has not proven that she has the good faith intention or honesty that she intends to do

what she is stating in the Two Month Notice. I cancel the Landlord's Two Month Notice and the tenancy shall continue until it is ended in accordance with the Act.

The Landlord's One Month Notice was deemed served on the Tenants on October 10, 2021. I find that this notice also complies with the form and content requirements of Section 52 of the Act. The Landlord did not present any evidence on why this tenancy needed to end due to cause. RTB Rules of Procedure 7.4 provides as follows:

> **7.4 Evidence must be presented:** Evidence must be presented by the party who submitted it, or by the party's agent.

I note this is a guiding principle for parties in an RTB dispute resolution proceeding, or any legal matter, to bring their best evidence forward. The Landlord uploaded documentary evidence; however, I was not directed to any of their evidence she wanted me to consider for her case. Specifically, the Landlord did not present evidence on how the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or, put the Landlord's property at significant risk. I point out that any significant interference, unreasonable disturbance or serious jeopardizing of health or safety must be affecting occupants of the rental unit. I would not consider evidence from neighbours as they are not covered by the Act. (emphasis mine)

I do not find that the Landlord has proven cause specified in the One Month Notice, accordingly, I cancel the Landlord's One Month Notice and the tenancy shall continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold $100.00 from the next month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's Two Month Notice is granted.

The Tenants' application to cancel the Landlord's One Month Notice is granted.

The Tenants may withhold $100.00 from the next month's rent to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 27, 2022

Residential Tenancy Branch