



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MUSLIM EDUCATION AND WELFARE
FOUNDATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **DRI, MNDCT, CNL, FFT**

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. An Order disputing a rent increase that is above the amount allowed by law pursuant to Section 43 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Legal Counsel, AP, the Tenants, SIA and ZIA, and the Tenants' Legal Counsel, CVT, 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 personally served the Two Month Notice on October 30, 2021 and provided proof of service for that notice. I find that the Two Month Notice was served on the Tenants on October 30, 2021 pursuant to Section 88(a) of the Act.

The Tenants personally served the Landlord with the Notice of Dispute Resolution Proceeding package and their evidence for this hearing on November 18, 2021 (the “NoDRP package”). The Landlord confirmed receipt of the NoDRP package and evidence on November 18, 2021. I find that the Landlord was served with the NoDRP package for this hearing on November 18, 2021, in accordance with Section 89(1)(a) of the Act.

Preliminary Matter

Prior to the parties’ testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on their application, the most urgent of which is the claim to cancel 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 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.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s Two Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. 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.

An oral tenancy arrangement began in April 2017. The Landlord in the past has offered the rental unit as temporary housing for people in need. In 2017, the Tenants could afford to pay \$800.00 per month and the tenancy continued on this basis. By the end of 2020, the Tenants expressed a desire to continue to reside in the rental unit, and the Landlord began negotiations with the Tenants for a market value rent amount. The Landlord and Tenants entered into a written tenancy agreement which began as a fixed term tenancy on January 1, 2021. The fixed term tenancy end date was December 31,

2021. Monthly rent is \$1,600.00 payable on the first day of each month. The Tenants are responsible for 100 percent of all utilities. No security deposits were collected at the start of the tenancy.

The reasons listed for the Landlord's Two Month Notice are all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. Attached to the Two Month Notice was the 'Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession'. The effective date of the Two Month Notice was December 31, 2021.

The Landlord submits that the Tenants are claiming, based on the Landlord's bylaws, that they have a long term tenancy agreement, of which the Landlord denies. In 2021, when the Landlord informed the Tenants they wanted to sell the property, the Tenants tried to arrange financing for the property, but were unsuccessful. Around July 2021, the residential property was listed for sale. The Landlord's written statement provides that at no time did the Tenants state they were entitled to a long term tenancy.

The Landlord and the buyer of the residential property entered into a Contract of Purchase and Sale dated October 11, 2021. The buyer intends in good faith to occupy the property and wants exclusive possession of the residential property.

In a February 18, 2022 email to the Landlord's Legal Counsel from the Tenants' Legal Counsel, CVT asks AP to consider several aspects of which they are asserting:

- The written tenancy agreement entered into in December 2020 is the 'landlords [sic] document'.
- The 'notice' of rent increase.
- Reference to a February 7, 2022 "With Prejudice" letter to the Landlord containing a settlement proposal, two terms of which are: 1) The Tenants will vacate the Property no later than March 31, 2022; and 2) The Landlord will pay to the Tenants the sum of \$60,000.00, which funds are defined as the "Settlement Funds". The Tenants tendered \$4,800.00 which covers January to March 2022 rental amount, a sum the Tenants owe the Landlord for unpaid rent.
- The Tenants' proprietary estoppel claim.

The Tenants' Legal Counsel submits that the Landlord has not met the test for relief under the Act or the *Residential Tenancy Regulation* and that an Order of Possession

not be granted. CVT states that the RTB does not have the jurisdiction to award the monetary remedy the Tenants are seeking.

The Tenants have a matter proceeding in the Supreme Court stating they have a long term tenancy with the Landlord and are claiming an equitable proprietary interest in the residential property. The Tenants did not provide evidence of any representation or assurance made to the Tenants whereby the Tenants can expect some right or benefit over the residential property. CVT states the representation or assurance can just be an assumption. In this hearing, they seek to cancel the Landlord's Two Month Notice.

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

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- (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;*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*

(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 October 30, 2021. I find the Two Month Notice satisfies the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on November 15, 2021. November 14, 2021 was day 15 after the Tenants received the Two Month Notice; however, it was a Sunday, and the definition of 'Days' in the RTB Rules of Procedure state, "*If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.*" November 15, 2021 then was the final day that a dispute resolution application could be made, accordingly, I find that the Tenants have filed for dispute resolution in time pursuant to Section 49(8)(a) of the Act.

I find that the Tenants entered into a residential tenancy agreement with the Landlord on December 5, 2020 of their own volition. Ownership of the document is one found on the RTB website, namely #RTB-1, it is the most current tenancy agreement used by landlords and tenants, and most tenancies are initiated using this agreement. The tenancy began as a fixed term tenancy, then would continue as a month-to-month tenancy. I find that the Addendum to Rental Agreement does not specify any 'long term tenancy' conditions. There is nothing added to this tenancy agreement that would indicate to me that the Tenants were agreeing to a 'long term tenancy'. The Landlord denies that there is a long term tenancy established between the Landlord and the Tenants for the rental property and I agree.

The Tenants submit that the Landlord is estopped from selling the residential property. They proffered that the equity doctrine of proprietary estoppel is in play in this matter. In *Cowper-Smith v. Morgan*, 2017 SCC 61, the Chief Justice wrote that, "*[a]n equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word.*" The doctrine protects the claimant's equity in a matter, and as Lord Denning M.R. wrote in

Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd., [1982] 1 Q.B. 84 (C.A.), at p. 122:

When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands. (emphasis mine)

The Tenants commenced a matter in the Supreme Court on December 29, 2021 seeking that the Tenants have an equitable claim of an estate or interest in land, an Order of Possession, and an Order for Restitution in an amount to be determined by that court. I agree the monetary award amount is beyond what the Director can order, if warranted.

The planned fixed term tenancy end date was December 31, 2021, and the Landlord sold the property. I find that based on the documentary evidence uploaded by the parties and the Landlord's Legal Counsel's submissions that the Landlord entered into an agreement in good faith to sell the rental unit, they proved all the conditions for the sale of the residential property were satisfied, and that the buyer of the property has asked the Landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit. The Landlord provided notice to the Tenant by serving a Two Month Notice for Landlord's use. Based on the evidence from the Landlord, on a balance of probabilities, I find that this tenancy must end due to Landlord's use of property, and especially because the property has sold.

I caution the Landlord to regard Section 51 of the Act regarding: **Tenant's compensation** after a Section 49 notice, which comes into play when the Landlord does not fulfil the stated purpose in their notice. Based on the Landlord's documentary evidence submitted I am satisfied that the Landlord has proven, on a balance of probabilities, that the buyers have the good faith intention to occupy the rental unit, and I dismiss the Tenants' application to cancel the Landlord's Two Month Notice without leave to re-apply.

As the Tenants failed in their application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

Order of possession for the landlord

- 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 previously found that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act. I believe that the buyer has the good faith intention to occupy the rental unit and I uphold the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenants.

Conclusion

The Tenants' application to cancel the Landlord's Two Month Notice is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: March 03, 2022

Residential Tenancy Branch