



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COULDWELL INVESTMENTS
LLC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDCT, FFT

Introduction

This hearing dealt with cross applications filed by the Tenant. On December 13, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 pursuant of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 11, 2022, the Tenant amended her Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

On January 19, 2022, for some reason, the Tenant made another Application for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing, with J.K. attending as her advocate. Owner W.C. attended the hearing, with W.G. attending as agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

The Tenant advised that the Landlord was served with her Notice of Hearing package by email on or around December 15, 2021; however, W.C. claimed that he never received this package. He stated that he was only aware of this hearing because he received a reminder email from the Residential Tenancy Branch and that he received the dispute information when he contacted the branch on March 24, 2022. Records indicate that he did speak with an Information Officer on this date about this issue. However, I find it important to note that the Landlord submitted evidence to the branch as early as March 9, 2022, so it is evident that the Landlord was actually aware of this hearing prior to when he spoke with the Information Officer. In addition, later on in the hearing, W.C. advised that he was aware of this hearing on at least February 9, 2022.

Given these inconsistencies in W.C.'s testimony, I find it more likely than not that he was served the Notice of Hearing package according to the Tenant's testimony. Regardless, even if he did not receive this then, he confirmed that he was prepared to proceed with this hearing in any event.

As the Tenant's monetary claims for compensation were severed, service of the Tenant's Amendment and second Notice of Hearing package was not addressed.

The Tenant advised that she served some of her evidence by email within the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules") and then additional evidence was served late, contrary to these Rules. W.C. acknowledged that he received the Tenant's evidence that did comply with the Rules; however, the Tenant's late evidence should not be considered as he did not have sufficient time to review these documents. Based on this testimony, I have only accepted the Tenant's documentary evidence that was served in accordance with Rule 3.14 and will only consider this evidence when rendering this Decision. All additional evidence has been excluded and will not be considered.

W.C. advised that the Tenant was served with his evidence by email on March 10, 2022 and the Tenant confirmed that she received this. However, J.K. stated that additional late evidence was served the day before the hearing and that the Landlord's late

evidence should not be considered. Based on this testimony, I have only accepted the Landlord's evidence that was served in accordance with the timeframe requirements of Rule 3.15 and will only consider this evidence when rendering this Decision. The Landlord's late evidence has been excluded and will not be considered.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

As a substantial amount of time was spent discussing service of documents, the details of the tenancy were not discussed as they were not particularly pertinent to addressing the Notice. However, all parties agreed that the tenancy was a month-to-month, verbal tenancy agreement. W.C. was cautioned that the *Act* required that a written tenancy agreement be completed and that this would be beneficial as it would protect both parties in the event of a dispute.

All parties agreed that the Two Month Notice to End Tenancy for Landlord's Use of Property was served on or around November 28, 2021 by being posted to the Tenant's door. The reason the Landlord served the Notice was because "The landlord 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." The Notice indicated that the effective end date of the tenancy was February 28, 2022.

W.C. advised that the Landlord is a family corporation and that he owns the most voting shares in the corporation. He stated that he was a neurosurgeon in the United States, that he would soon be retiring, that his plan was to move back into the rental unit to restore the property to a functional ranch again, and that it was not possible to do so with the Tenant in the rental unit. He submitted that his son, who was a student in the United States, would also move into the rental unit. He testified that the Notice was given with the particular effective end date of tenancy because calving season starts in March. However, he was forced to sell some of his cattle due to the Tenant's dispute of the Notice and the scheduled date of the hearing.

When W.C. was asked to elaborate on the use of the rental unit, he advised that either he, his son, or his nephew would occupy the rental unit as he needed "someone" to help W.G. with operation of the ranch. He testified that the rental unit will be occupied temporarily, "as needed", by these listed persons. He advised that he owned a property in the local area that was a residence that he would live at. In addition, when he was informed that his nephew occupying the rental unit would not meet the definition of close family member under the *Act*, he stated, "Well you tell me what a close family member is then."

The Tenant made numerous submissions about the history of the tenancy and of her belief that the Notice was not served in good faith. The salient issues have been summarized for brevity. She advised that there was a history of negative interactions between her and W.G. over the years, and that she was repeatedly threatened with eviction. As well, she stated that she made requests to the Landlord for repairs, and that these were ignored. Other instances were mentioned as well, and she referenced documentary evidence to support her position. She stated that the rental unit is an old 1960s trailer, and it is not likely that W.C. or his son would realistically live there. She also referenced two past Decisions of the Residential Tenancy Branch, involving the same parties, that were not found to be in the Landlord's favour (the relevant file numbers are noted on the first page of this Decision).

The first Decision, dated November 25, 2021, pertained to a Two Month Notice to End Tenancy for Landlord's Use of Property served on or around June 22, 2021. This notice was determined to be cancelled and of no force or effect. The second Decision, dated December 6, 2021, pertained to the Landlord's Application for an Order of Possession based on an early end of tenancy Application. This second Application was dismissed without leave to reapply because the Landlord's "arguments [were] not sufficient to consider an Early End of Tenancy." It is the Tenant's position that the Notice that is currently in dispute demonstrates that the Landlord is simply doing whatever he can to attempt to end this tenancy.

J.K. made submissions that questioned the Landlord's good faith when serving the Notice. She noted that W.C. mentioned that his nephew might move in. As well, while he stated that his son would also move in, she submitted that W.C. did not provide any written statement, nor did his son call into the hearing to provide testimony that would corroborate W.C.'s testimony. She referenced the documentary evidence submitted to support the position that this Notice was not given in good faith, and she stated that the inconsistencies in W.C.'s testimony support this, on a balance of probabilities.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord 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.

Under this Section, a family corporation is defined as a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members. As well, a close family member is defined as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the

effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reasons for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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... 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.

In addition, this policy guideline states that "the implication is that 'occupy' means 'to occupy for a residential purpose.' (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy under sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space."

When reviewing the evidence and submissions before me, I find it important to reiterate to W.C. that the reason he chose to serve this Notice is because the "Landlord 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" and that the burden of proof is on him to justify why the Notice was served. When reviewing the Landlord's documentary evidence, much of it is related to his concerns with the Tenant's alleged conduct and behaviours, which would be relevant to attempting to end the tenancy using a One Month Notice to End Tenancy for Cause, as opposed to the reason chosen for this particular Notice.

When turning to his submissions that Landlord is a family corporation, that he owns voting shares in the corporation, and that he or his close family member intends in good faith to occupy the rental unit, I note that he has not submitted any documentary evidence to prove that the Landlord is a family corporation or that he owns voting shares in it. However, I accept his solemnly affirmed testimony that this likely is the case.

In turning my mind to the second part of the reason on the Notice of W.C.'s, or his close family member's, intention in good faith to occupy the rental unit, I note that the Notice was dated "November 28, 2022" which I can reasonably infer was a typographical error. Regardless, all parties agreed that the Notice was served on or around November 28, 2021 by being posted to the Tenant's door. What this means is that the Landlord's plans to occupy the rental unit on the effective date of the Notice, of February 28, 2022, should have been initiated prior to service of the Notice. While W.C. advised that it was his intention to retire and move back into the rental unit, I do not find that he has submitted any documentary evidence to corroborate the timing of this move, such as flight documents or plans of moving, that coincide with the effective date of the Notice.

Moreover, he initially advised that his son was also going to move into the rental unit. He indicated that this son was in school currently and would move in after the school year was completed. However, again, apart from his solemnly affirmed testimony, I do not find that W.C. has submitted any documentary evidence to corroborate the timing of his son's move, such as flight documents or any plans of moving, that coincide with the effective date of the Notice. Moreover, the effective date of the Notice was February 28, 2022 and I am skeptical that his son's school year would have ended on or around this date as this does not appear to be a generally accepted end of a school term.

In addition, I note that he stated that a person that would also be moving in would be his nephew, and this is important to note because this particular individual would not qualify as a close family member that would be permitted to occupy the rental unit under the definition of the *Act*. On this point, as W.C. asked for me to tell him what defined a close family member, it became clear that he did not fully read the Notice, that he did not understand entirely why he was serving it, that he did not truly read and understand the requirements of Section 49 of the *Act* with respect to service the Notice, and that the Notice was likely served out of the frustration that he has experienced because of his dissatisfaction with the Tenant's alleged behaviours and actions.

Finally, I note that during the hearing, when W.C. was asked to elaborate on his reasoning for service of the Notice, he claimed that I was “coming at him.” However, as the burden of proof was on him to make submissions to support the reason on the Notice, it was incumbent on him to demonstrate the validity of this specific reason chosen, and at that point, his submissions were fairly generalized. As a result, he was afforded with additional opportunities to clarify his submissions with respect to the specific reason on the Notice. In his following testimony, he again made vague references about who would occupy the rental unit (ie. himself, his son, and/or his nephew) and that it would not be occupied full-time. His submissions appeared to indicate that the rental unit would be used by a collection of rotating people who would assist W.G., on an as needed basis, with the operation of the ranch. Furthermore, it was evident that he was not aware of the requirement to occupy the rental unit when using this Notice, or what the *Act* contemplated as occupation with respect to this type of Notice.

When reviewing W.C.’s submissions on the whole, I find that the vagueness of his testimony and the lack of any compelling documentary evidence causes me to doubt that he or his son would move into the rental unit. Moreover, given that he was not aware of the definition of close family member, as he stated that his nephew would also be moving in possibly, I find that this causes me to doubt further that this Notice was served in good faith. In addition, I am satisfied from W.C.’s broad submissions that the rental unit would not be occupied for a residential purpose, but would seemingly be used as a temporary location for whoever was required to assist with the management of the ranch, at necessary intervals.

In assessing the totality of the evidence and submissions before me, I acknowledge it is likely that there is a contentious relationship between the Landlord and the Tenant here that has been ongoing for a substantial amount of time. Furthermore, it is evident from W.C.’s perspective that his dissatisfaction with the Tenant’s alleged behaviours and actions are partially a source of his frustration and desire to end the tenancy. However, it is clear here that he has not researched the manners with which he is permitted to end the tenancy under the parameters of the *Act*, especially with respect to the use of this Notice. While it would not surprise me that the Tenant may be engaging in a manner that could possibly jeopardize her tenancy by virtue of a different notice to end tenancy, that is not an issue before me in this Application.

As the burden of proof rests with the Landlord to prove why the Notice was served, I do not find that W.C. has provided sufficient documentary evidence, or any compelling

submissions from himself, to support the validity of the specific reason chosen for service of the Notice. I find it, more likely than not, that the Notice was served to disguise an ulterior motive for wanting to end the tenancy, and as a result, I am doubtful that the Notice was served in good faith.

Ultimately, based on the doubts raised above, I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of November 28, 2021 is cancelled and of no force and effect.

As the Tenant was successful in her first Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent in satisfaction of this claim.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of November 28, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's claims for monetary compensation have been severed, and the Tenant is at liberty to reapply for these claims in a separate Application.

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: April 1, 2022

Residential Tenancy Branch