Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDCT, OLC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy to comply with a government order pursuant to s. 47(1)(k);
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2833.90 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord spoke limited English and CC acted as interpreter and representative. The tenant called into the hearing at 11:03 a.m.

The tenant testified he served the landlord with the notice of dispute resolution proceeding and supporting evidence package via registered mail on January 14, 2022. The tenant provided a UPS tracking number confirming this mailing which is reproduced on the cover of this decision. The landlord confirmed receipt of the notice of dispute resolution package via registered mail on January 15, 2022. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act

I note s. 55 of the *Act* requires that when a tenant applies 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, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which **prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing**. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue Tenant's Application

The tenant applied for various and wide-ranging relief. Pursuant to rule 2.3 of the Rules, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are general scheduled for one-hour and rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

Upon review of the tenant's application, I find that the primary issue is whether the tenancy will continue or end pursuant to the One Month Notice to end tenancy that is subject to the application.

Accordingly, pursuant to rule 2. 3 of the Rules, I dismiss the tenant's following claims with leave to reapply:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2833.90 pursuant to section 67;

I heard no argument with respect to the above issue and I am therefore not seized.

The hearing proceeded on the issue tied to the notice to end tenancy signed December 22, 2021.

Preliminary Issue Tenant's Request for an Adjournment

This hearing was reconvened after the tenant's initial request for a subpoena requiring the Bylaw Officer to attend the hearing. Upon review of the information on file, the tenant's request was denied as the tenant could not substantiate what relevant information the Bylaw Officer could provide at the hearing.

At this hearing, the tenant again requested an adjournment. He had heard back from the Bylaw Officer who suggested that if the tenant wanted additional information, he could put in a freedom of information (FOI) request. The tenant did so and stated that under FOI the City has 30 days to respond. Again, I asked the tenant specifically what information he was trying to obtain and how it related to this hearing. The tenant was vague and could not explain exactly what information he was looking for or how it was related to the dispute before me.

CC objected to an adjournment stating that this situation was stressful and taking an emotional toll on the elderly landlord who just wanted the matter resolved. CC stated that the city has provided sufficient information in the letter. The tenant stated that stress was not a valid objection and that he too was stressed and wanted the issue resolved.

I denied the request for adjournment because the tenant did not provide sufficient explanation regarding what evidence he was looking for and how that evidence would advance his argument. I find that the evidence on file is sufficient to proceed with the hearing.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the Notice;
2) an order that the landlords comply with the Act;
3) recover the filing fee?

If the tenant is unsuccessful in his application, is the landlord entitled to:

1) an order of possession.

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting January 1, 2022 through December 31, 2022 and continuing month to month thereafter. Monthly rent is $850.00 and is payable on the last day of each month. The tenant paid the landlords a security deposit of $425.00 The landlord still retain this deposit. Prior to the start of the fixed term tenancy agreement, the tenant requested to take possession of the rental unit early and the landlord agreed. The tenant took possession of the rental unit on December 16, 2021 and paid $438.70 in pro-rated rent. Tenancy began December 16, 2021 by way of oral agreement between the landlord and tenant.

The interpreter stated the landlord purchased the property in the Spring of 2021. There was an existing tenant in the suite who subsequently moved out. The landlord was assured by the realtor that the basement suite was a legal suite. When the tenant moved out the landlord advertised for another tenant. The current tenant responded to the advertisement and the current tenancy agreement was signed.

On December 18, 2021 a Bylaw Inspector visited the rental unit. On December 20, 2021 the landlord received a letter from the City advising her that the secondary suite "has not been inspected and/or approved" and was issued a Bylaw Offence Notice "for no secondary suite occupancy permit".

The letter gave the property owner/landlord two options. The letter reads, "…you are required to either decommission the suite or legalize it" and provided instructions regarding both options.

The letter also stated "Tenant(s) are not permitted to occupy an illegal suite". Based on the letter, the landlord issued the One Month Notice to comply with a government order. The landlords promptly reached out to the Bylaw Office as they wished to comply with the letter issued by the municipality. The landlord investigated both options. Legalizing the suite is a lengthy and expensive process. The landlord decided to decommission the suite. CC stated that they tried to work with the tenant to find a solution but were unsuccessful. Also, the tenant recorded conversations without their permission. CC states the landlord was not attempting to intimidate the tenant. The property owner is an elderly

woman with very limited English skills, who has worked hard all her life and was finally able to purchase this property in 2021.

The tenant provided a well-articulated legal argument regarding cancellation of the One Month Notice. He included in his written submission three (3) previous RTB decisions, the City Zoning Bylaws, written submissions, and the non-consensual audio recordings of the December 22, 2022, conversation.

The tenant argues that secondary suites are permitted in this area. If the landlord chose to comply with the RTA and "act responsibly" they have the option to bring the secondary suite into compliance by applying for and obtaining a license to operate a secondary suite. The tenant submitted into evidence the application form.

The tenant stated that the previous owners were in the process of legalizing the suite but did not complete the process. The tenant wrote, "…the previous owner applied for a permit to operate a secondary suite with permit number SSXXXX (application date – June 11, 2021). In addition, these records seem to indicate that the secondary suite was already in the process of being brought into compliance sometime between May 31, 2021 and August 21, 2021. "GARBAGE-SECONDARY SUITE" and "RECYCLING-SECONDARY SUITE" indicate that these services are currently being provided to the secondary suite unlike the "WATER-SECONDARY SUITE" and "SEWER-SECONDARY SUITE" which were stopped on August 21, 2021.

The tenant wrote, "This publicly available information **contradicts** the landlords' and their agent's statements which were aimed at **intimidating me into moving out."**

The tenant provides as follows:

> Instead of bringing the secondary suite into compliance with by-law, which would in turn bring the landlords into compliance with the RTA, the landlords thought "here's a **new comer to Canada**, with **limited language skills,** who doesn't know his rights and responsibilities as a Tenant under the RTA" and that "if we could intimidate him enough into believing that the city requires him to move out of the suite then we wouldn't have to go through the process of acquiring a license to operate it, paying inspection fees, and acquiring a licence to operate a secondary suite" The landlords have repeatedly acted in a self-serving, illegal manner. [reproduced as written].

The tenant argues that the letter sent to the landlords is not a "government order" and therefore the One Month Notice is thus invalid. The tenant also pointed out that "municipal by-laws **do not supersede a provincial statue** such as the Residential Tenancy Act". [reproduced as written]

The tenant also argued that the doctrine of frustration does not apply to the tenancy agreement because the illegal suite was reasonably foreseeable at the time the contract was entered into.

In the audio recording of the conversation of December 22, 2021, the tenant clearly states on several occasions that he is "only considering [his] interests" and point out that the landlord is acting in kind. The tenant also stated if the landlord finds him a suitable rental unit within a 5 km he would be "willing to go the extra mile". The tenant alleged that finding accommodation is 'very complex when you are of my background, male, not Punjabi' further stating that he did not 'want to go into the details' but has 'faced a lot of discrimination in the past for finding a house so it is not as – so very easy'.

In the audio recording the tenant also acknowledged that "[A] and her husband have been very kind to me. Right? That's why I appreciated the gesture they made."

Although, the tenant testified both orally and in a written submission that the Notice and the December 22, 2021 conversation recorded without consent by the tenant between the tenant and the landlord was the landlord's attempt to intimidate the tenant into moving. After listening to the complete audio recording (some of which was of poor sound quality) there was insufficient evidence of intimidation. The audio recording supports the landlord's testimony that they were trying to find a solution to the problem that would work in the interests of both parties.

The tenant told the landlord if there was a suitable rental unit within a 5 km radius, he would be open to moving. The landlords submitted into evidence at least one possible rental option and there is no suggestion the tenant followed up.

The tenant stated he was not arguing that the landlord must legalize the suite simply that the landlord complies with the Act. In the non-consensual audio recording the tenant states that he is willing to cooperate with the landlord and the municipality to legalize the suite.

Analysis

On December 18, 2021, a By-law Inspector attended the landlord's basement suite on a site inspection. On December 20, 2021, the landlord received a letter from the municipality advising that the basement rental unit was illegal. The suite "has not been inspected and/or approved" as a secondary suite and "no secondary suite occupancy permit" was ever issued. The letter further stated that in accordance with the bylaw, tenants are not permitted to occupy an illegal suite.

Upon receipt of the letter, the landlord immediately issued a notice for cause under s. 47(1) (k):

> **47**(1) a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> > (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

As per the audio recording, the tenant may have refused to accept the One Month Notice on December 22, 2022; therefore, the landlord posted the One Month Notice to the tenant's door on December 22, 2021. At the hearing the tenant argued that the posted Notice was "deemed served" on December 25 a statutory holiday and cited s. 25 of the *Interpretation Act* that relates to the calculation of time. The argument advanced by the tenant is moot given he filed for Dispute Resolution December 31, 2021, with in the 10-day requirement under the Act.

Before deciding on the merits of the tenant's application, I first considered if the tenancy agreement was a legally binding agreement given that the suite does not conform to municipal bylaw requirements.

Although the renting of the basement suite violates municipal land use bylaws, I find the tenancy agreement is not an illegal contract for purposes of establishing the rights and obligations of the parties under the Act. I made this determinization based upon review of the policy statements contained in Residential Tenancy Policy Guideline 20: *illegal Contracts*. The policy guideline provides the following, in part:

> This guideline deals with situations where a landlord rents premises in a circumstance where the rental is not permitted under a statue. Most commonly this issue is raised where municipal zoning by-laws do not permit secondary suites and rental of the suite is a breach of the zoning by-law. However municipal by-laws are not statues for the purposes of determining whether or not a contract is legal, therefore a rental in breach of a municipal by-law does not make the contract illegal.

In other words, the RTA applies independent of the legality of the suite.

The landlord and tenant entered into a legal written fixed term tenancy agreement effective January 1, 2022. Ending on December 31, 2022 and continuing month to month at the end of the term. Based on the evidence supplied by both the landlord and tenant, a verbal amendment to the written tenancy agreement resulted in occupancy of the rental unit effective December 16, 2021. I, therefore, find that the fixed term tenancy began December 16, 2021.

Having found the tenancy agreement enforceable, I now turn my mind to the terms of the agreement. The tenancy agreement is a "fixed term tenancy" . Section 49(2) sets out the requirements for ending a fixed term tenancy. Specifically:

(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. [emphasis added]

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
(i) not earlier than 4 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. [emphasis added

When a tenant and a landlord sign a fixed term tenancy contract, both are bound by the tenancy terms, including the obligation to continue the agreement to its expiry date, failing which the party responsible for prematurely ending the tenancy would be in violation of the agreement. That party would therefore be liable , under s. 7 of the Act, for any losses that flow from this violation. Fixed term tenancies may, however, be ended for cause under s. 47(1).

The tenant argued there is evidence that the suite was being brought into compliance by the previous owner. He cites a "permit number" and points out that garbage, recycling are currently provided to the secondary suite unlike water and sewer which stopped on August 21, 2022.

With respect to double utility billing, the municipality charges all homes that by definition of the bylaw have a secondary suite with the extra garbage, sewer and water (if no meter) as a recovery of costs for the service. This does not mean that the suite has either an occupancy or rental permit. The municipality allows the property owners to keep these areas for their own use as, for example a summer kitchen or a 'man cave' but they cannot be rented or have anyone other than immediate family occupying the unit by the definition in zoning. Water and sewer may have been halted if the home owner went to city hall and signed a statutory declaration stating the suite is not rented and is only for their use. This would pause those charges until the following year, when the home owner would have to sign a new declaration. If the homeowner does not sign the declaration every year, then the suite must be decommissioned.

The current property owner/landlord is not bound by the previous owners' plans. The landlord's agent testified the landlord will not apply to legalize the suite or for an occupancy permit. The landlord intends to decommission the suite. The landlord's objective is to bring this property into compliance through decommission.

I concur with the tenant's stated position that the legality of the rental unit is between the landlord and the municipality and not his concern. He pointed out in the audio recorded conversation that he discharged his responsibilities after signing the tenancy agreement by providing a security deposit and paying rent.

The tenant further argued that the landlord was required to supply and maintain a rental unit that complies with the housing standards required by law, pursuant to s. 32 of the Act, and failed to do so. Section 32 refers to the landlords' and tenants' obligations to repair and maintain the unit. The tenant has not provided evidence that the rental unit does not meet section 32. I dismiss the tenant's application for an order that the landlord comply with the Act, without leave to reapply.

The tenant further argued that the letter was not a "government order" and therefore he is not required to vacate the rental unit and the Notice should be cancelled.

I reviewed the letter from the Bylaw Inspector. Notably the letter from the municipality sent on December 20, 2021 appears to be for information purposes. A formal "order" was not issued to the landlord by the municipality requiring the tenant to vacate the rental unit. Thus, the Notice issued pursuant to s. 47(1)(k) is of no force or effect.

Notwithstanding the above, in the alternative, if a Bylaw Inspector determines that tenancy is prohibited and issues an order requiring the landlord to shut down the suite, the landlord can issue a One Month Notice to End Tenancy for Cause to the tenant.

Given the property owner/ landlord's limited language skills and her requires the assistance of an interpreter, if she intends to decommission the suite or legalize the suite, the landlord may wish to seek legal counsel to guide her through the process to ensure that whatever choice made is done in full compliance with provincial statutes and municipal bylaws.

I accept as fact that the property owner relied on information provided by the realtor regarding the legal status of the secondary suite. Notwithstanding the above, it is the property owner's responsibility to fact check to ensure the secondary suite was compliant with City bylaws prior to renting out the unit.

In this case, the landlord bears the burden of proving the Notice should be upheld and that the subject tenancy must end to comply with a municipal order. I find the landlord has failed to meet this burden. The One Month Notice to End Tenancy is cancelled, and the tenancy shall continue until ended in accordance with the Act.

Pursuant to section 72(1) of the Act, as the tenant has been partially successful in the application, the tenant may deduct the **$50.00** of the filing fee from a future month's rent on a **one-time basis** in **full** satisfaction of the recovery of his filing fee.

Conclusion

I allow the tenant's application to cancel the One Month Notice. This Notice is of no continuing effect. This tenancy continues until ended in accordance with the Act.

I dismiss the tenant's application for an order requiring the landlord comply with the Act, without leave to reapply.

As the tenant was partially successful in his application, I authorize the tenant to deduct $50.00 on a one time only basis from a future month's rent.

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 14, 2022

Residential Tenancy Branch