Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, CNL, RPP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order to cancel a One Month Notice to End Tenancy for End of Employment dated January 13, 2022 ("One Month Notice"); for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated January 27, 2022 ("Two Month Notice"); for an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed; and to recover the $100.00 cost of their Application filing fee.

The Tenants, J.W. and M.L., and the Landlords, S.C. and G.C., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the application, the most urgent of which are the claims to set aside the One Month Notice and the Two Month Notice. I advised them that not all of their claims on the Application are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenants' request to set aside the One Month Notice, the Two Month Notice, and recovery of the filing fee at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

When a tenant applies to cancel an eviction notice issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the eviction notice is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying for dispute resolution. However, in some situations, the onus of proof is on the other party. For example, a landlord must prove the reason they wish to end the tenancy when their tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlords in this proceeding.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession? and
- Are the Tenants entitled to recovery of their $100.00 Application filing fee?

Background and Evidence

The Tenants submitted a copy of the tenancy agreement, which the Parties agreed sets out that the periodic tenancy began on June 1, 2014, with a monthly rent of $200.00, due on the first day of each month. They agreed that the Tenants did not pay the

Landlord a security or a pet damage deposit. The Parties agreed that each of the Tenants was working for the Landlords, as well as being Tenants in the rental unit.

The tenancy agreement states that the Tenants' rent includes water, electricity, internet, heat, garbage collection, recycling services, free laundry, a refrigerator, a stove, oven, and window coverings. The Tenants receive housing, including these services and facilities for $200.00 a month. The Landlord said they are losing money by providing the Tenants with all these services for $200.00, when they are not working for the Landlord.

The Landlords explained that the residential property is a working farm of approximately 650 acres, on which many of the employees of the farm live. They said that in addition to wages, the arrangement for workers is that they receive a reduced rate on rent. The Tenants have paid $200.00 a month for their accommodation since June 2014.

The Landlords said that they served the Tenants with the One Month Notice, because J.W.'s employment with them ended, as M.L's employment had ended some time prior to this.

M.L. implied in his testimony that the work he produced for the Landlords was of such value that the Tenants' rent should remain at the reduced rate even after the Tenant is finished his work.

The Landlords said:

> We do know what the market value is of a rental, and if we were just renting out, we would not charge them $200.00, and not paying the utilities.
>
> Going back to her statement about the landlord agreement at the beginning. We have submitted that that agreement was not made by us, but by our office clerk at the time to let [M.L.] have evidence that he was living here to get his mail here. Our clerk said that she put the information on there that might be correct. And she put the same price as the other workers were paying. .
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> [emphasis added]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Tenants argued that other people live on the property who do not work there. However, they did not point me to any documentary submissions to support this statement. The Landlord countered this testimony by explaining that there are not, in fact, people living on the property who do not work there, other than spouses or family members of the employee. The Landlords explained a few situations that may look like non-workers on the property; however, they explained why this is not the case.

I find from my experience as an arbitrator, and from being a citizen of British Columbia that the rent charged for this accommodation is considerably below that of the general market rate.

The legal doctrine of *res ipsa loquitur* is translated to mean “the thing speaks for itself”. It is normally used in a different scenario – being a rebuttable presumption or inference that a defendant was negligent. However, when applied to this situation, this doctrine tells me that the circumstantial evidence before me speaks for itself. I find that the Tenants did not provide a sufficient response to why they should pay such a low rent on a farm that houses the Landlords’ employees. It is inconsistent with common sense and ordinary human experience that the Tenants’ low rent and services was not connected to their work on the farm. The undisputed evidence before me is that the Tenants’ work on the farm has ended, and therefore, their subsidized tenancy should end, as well.

The Tenants argued that this arrangement is not set out in their tenancy agreement. The “parol evidence rule” is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract. However, I find that the oral agreement between the Parties that the Tenants would receive lower rent to subsidize their income is not inconsistent with the tenancy agreement; rather, the oral and other circumstantial evidence explains and makes reasonable and understandable the extremely low rent paid in this situation.

I find that the preponderance of evidence before me indicates that the residential property is a working farm and that the majority, if not all of the people living on the residential property, work for the owners/Landlords. I find there is a *prima facie* case established that contradicts the Tenants’ arguments. I also find that the Tenants have directed me to nothing more than their opinions in establishing that they have grounds to remain living at the rental unit for the subsidized rent.

Accordingly, I find that the Tenants are unsuccessful in their Application to cancel the One Month Notice. I find that the Landlord has grounds to evict the Tenants in this set of circumstances, and accordingly, I confirm the One Month Notice and grant the Landlord an Order of Possession of the rental unit. As the effective vacancy date of the One Month Notice has passed, the **Order of Possession** will be **effective two days after it is deemed served to the Tenants.**

As these conclusions bring an end to the tenancy, I find I do not need to examine the merits of the Tenants' Application to cancel the Two Month Notice. As such, the Tenants Application is dismissed wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice, as the Landlords provided sufficient evidence to establish that they had grounds to evict the Tenants pursuant to the One Month Notice.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenant 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 final and binding on the Parties, unless otherwise provided under the Act, and 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 06, 2022

Residential Tenancy Branch