



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OP

Introduction

This hearing originally convened on July 29, 2022 and was adjourned to August 9, 2022 due to time constraints. This Decision should be read in conjunction with the July 29, 2022 Interim Decision. This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55.

Both parties attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's interpreter attended both hearings and affirmed to translate to the best of his ability.

Both parties were advised that pursuant to Rule 7.4 of the Residential Tenancy Branch Rules of Procedure, evidence must be presented, and that evidence not presented may not be considered.

Preliminary Issue- Naming of Parties

The landlord's application for dispute resolution only lists tenant R.O. as a tenant. The tenants' application for dispute resolution lists tenants R.O. and Z.B. as co-tenants.

Tenant R.O. testified that the original tenancy agreement with the previous landlords was an oral tenancy agreement made on the driveway of the subject rental property between the previous landlords, herself and Z.B.

Tenant R.O. testified that at the time the tenancy agreement was entered into R.O. and Z.B. were in a relationship and have a child together. Tenant R.O. testified that they both still reside at the subject rental property with their daughter but also rent another unit to provide them with space to work on their relationship. Tenant R.O. testified that they take turns living at the subject rental property with their child who remains at the subject rental property full time.

Tenant R.O. entered into evidence a copy of tenant Z.B.'s bank statement which shows that tenant Z.B. paid the original landlords the security deposit for the subject rental property in the amount of \$625.00 on December 6, 2016.

The landlord testified that the original landlord did not tell him that Z.B. was a tenant and only told him that R.O. was a tenant. The landlord entered into evidence a written tenancy agreement between the previous landlord and tenant R.O. which was not signed by the tenants. The landlord testified that the previous landlord provided the unsigned tenancy agreement during the sale process to evidence the tenancies in place. Only tenant R.O. is listed as a tenant on the written tenancy agreement.

The landlord testified that the tenant identified herself as a single mom which shows that Z.B. is not a tenant at the subject rental property.

The landlord testified that neighbouring tenants confirmed that Z.B. does not reside in the subject rental property. No documentary evidence to support the above statement was presented in the hearing.

The landlord testified that the email communications with the previous landlords between July 12-23, 2022 do not mention Z.B. as a tenant. The landlord entered into evidence an email from the landlord to the previous landlord and a responding email dated July 14, 2021. The emails only mention tenant R.O.; but the questions as to who the tenants are, was not asked in the above email exchange.

Based on the testimony of both parties, I find that the written tenancy agreement entered into evidence, which is not signed by the tenant, was drafted significantly after the tenancy started for the purposes of the sale of the subject rental property. I find that

it is not conclusive evidence of the oral agreement made at the start of the tenancy because neither tenant signed it.

As the landlord was not present at the formation of the oral tenancy agreement, I prefer tenant R.O.'s firsthand testimony of the terms of the original tenancy agreement which is supported by tenant Z.B.'s payment of the initial security deposit. I find, on a balance of probabilities, that R.O. and Z.B. are both tenants of the subject rental property. I find that tenant R.O.'s statement regarding being a single mother does not contradict her testimony in which she stated that her daughter is the full-time occupant and herself and tenant Z.B. alternate living at the subject rental property as tenants.

While the previous landlord may not have specifically told the landlord that Z.B. was a tenant, I find that the tenants have proved, on a balance of probabilities, that both R.O. and Z.B. are tenants.

I find the hearsay evidence pertaining to what the neighbouring tenants said to be of little to no weight as no signed witness statements were presented in the hearing and there is little to no evidence to establish that the neighbours would have a reasonable understanding of the tenancy and parenting arrangement of the tenants.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the landlord entitled to an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions, arguments and documentary evidence are reproduced here. The relevant aspects of the tenant's and landlord's claims, the parties' presented evidence and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2016 and is currently ongoing. Monthly rent in the amount of \$730.00 is payable on the first

day of each month. A security deposit of \$625.00 was paid by the tenants to the landlord.

Both parties agree that the original tenancy agreement was between the tenant and the previous owners of the subject rental property. The landlord testified that he purchased the subject rental property and the sale of the subject rental property completed on March 31, 2022 and that the possession date was May 1, 2022. The above testimony was not disputed by tenant R.O.

Both parties agree that the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on April 2, 2022. The Notice was entered into evidence, is dated April 2, 2022 and states that the tenant must vacate the subject rental property on June 30, 2022 because the rental unit will be occupied by the landlord or the landlord's close family member. The tenant filed to dispute the Notice on April 4, 2022.

The landlord testified that the tenant was served with the Notice because the house is older and lots of things need to be fixed and he wants to re-develop the adjacent land. The landlord testified that to do the necessary repair work at the subject rental property and develop the adjacent land, he needs to live at the subject rental property.

The landlord testified that his intention from the start was to live at the subject rental property. The landlord testified that he wants to move his family to the subject rental property and that they must move in soon because the sale of the landlord's home completes December 4, 2022. The landlord entered into evidence an addendum to the Contract of Purchase and Sale of the landlord's current home which confirms the completion date of December 4, 2022. The addendum is dated December 15, 2021.

Tenant R.O. testified that she filed to cancel the Notice because it was not served in good faith. Tenant R.O. testified that the landlord served the Notice in retaliation for the tenants not immediately signing a new tenancy agreement with the landlord.

Tenant R.O. testified that on April 1, 2022 the landlord came to the subject rental property with a written tenancy agreement which he asked her to sign. Tenant R.O. testified that she was not prepared to sign the tenancy agreement without having a full opportunity to review it.

Tenant R.O. testified that she told the landlord that she needed more time to review the

tenancy agreement. Tenant R.O. testified that she and the landlord arranged to meet the following day, April 2, 2022 for that purpose at 10:30 a.m. The landlord testified that they did not agree to meet on April 2, 2022 at 10:30 a.m., that is the date and time the tenant told him to meet her.

Tenant R.O. submitted that on the night of April 1, 2022 she got stuck in the snow on a local mountain and was stranded in the mountains until 7 a.m on April 2, 2022. Tenant R.O. submitted that as she had been up all night she forgot to re-schedule the meeting with the landlord and when he arrived at 10:30 a.m. on April 2, 2022, she asked to re-schedule the meeting. The tenants entered into evidence two witnessed letters attesting to tenant R.O. being stranded in the snow on the night of April 1, 2022.

The landlord testified that when he attended at the subject rental property at 10:30 a.m. on April 2, 2022, the tenant told him that she could not meet with him because she had too much liquor the night before and told him to come back at 3:30 p.m. This was disputed by tenant R.O.

Tenant R.O. submitted that she agreed to meet with the landlord at 3:30 p.m. on April 2, 2022 to sign the tenancy agreement. Tenant R.O. submitted that she tried to contact her previous landlords, with whom she had a good relationship, to gain clarity on her rights, but was unsuccessful and that since April 2, 2022 was a Saturday, the Residential Tenancy Branch was closed and she could not get answers to her questions.

On April 2, 2022 tenant R.O. testified that she was about to ask the landlord to re-schedule the meeting again when she saw a text message sent approximately one hour earlier in which the landlord asked to meet one hour earlier, at 2:30 p.m. The tenant testified that she texted the landlord at 2:09 p.m. and asked to meet on Tuesday April 5, 2022.

Tenant R.O. testified that the landlord arrived at the property at approximately 2:20 p.m., shortly after she asked for another extension. The above texts were entered into evidence. Both parties agree that the landlord's statement entered into evidence does not state the correct times the above text messages were sent. The landlord testified that he did not recall the specific times the texts were sent when he drafted the statement.

Tenant R.O. testified that when the landlord arrived at approximately 2:20 p.m. on April 2, 2022 he served her with the Notice and said that if she didn't sign the tenancy

agreement by Tuesday, April 5, 2022, then the Notice would come into effect. Tenant R.O. testified that she then filed to dispute the Notice.

The landlord testified that he did not provide the above ultimatum to tenant R.O. and that it was tenant R.O. who proposed the Notice be of no force or effect if she signed the tenancy agreement by April 5, 2022, which he did not agree with.

Tenant R.O. presented a text exchange between the parties dated April 4, 2022 which states:

- Landlord:
 - ...What was surprising was how you paid the rent and lived without a contract. In this regard, I think the people involved in this transaction should solve the problem. You didn't say a word about your signature when I showed your rental agreement with [the previous landlord] to home inspection on February 7th, and we showed each other my driver's license.
 - We are very embarrassed by your behavior and have come to realize that me and [the realtor] cannot trust you.
 - The other fourplex tenants have no problems with me. They also signed a rental agreement with [the previous landlord]. Today is April 4th and you have time until June 30th, to please find a new house to move to. I will move on July 1st.
 - The other fourplex tenants also signed a rental agreement with me on April 1, 2022. But you did not sign with the former owner and me. You can ask your neighbours, friends or family for advice. Good night.

The tenant testified that she did not meet with the landlord on April 5, 2022 because based on the April 4, 2022 text messages, the landlord was proceeding with the eviction and would not let her sign a new tenancy agreement with him. The tenant testified that she was confused when, on April 8, 2022, the landlord sent the following text:

You texted me on the afternoon of April 1st, but again you did not contact me on the afternoon of Tuesday, April 5th. You've been breaking your promises many times. Be aware of this....

The landlord testified that the tenant was supposed to text him about "the tenancy situation" on April 5, 2022, but did not do so.

Tenant R.O. submitted that the April 2022 text messages between the parties show that

the landlord did not intend on occupying the subject rental property and only decided to move in when she did not immediately agree to sign a new tenancy agreement.

Tenant R.O. testified that Residential Tenancy Branch Policy Guideline 2A states that good faith requires honest intention without dishonest motive and without an ulterior purpose. Tenant R.O. testified that the landlord had an ulterior motive when serving the Notice in that he served it as retribution for the tenants not immediately signing a new tenancy agreement. Tenant R.O. testified that she is not against signing a tenancy agreement with the landlord but wants to make sure she fully understands the tenancy agreement before she signs it, and the landlord did not provide her with that time before serving the Notice.

Tenant R.O. referred to the landlord's written statement, which both the landlord and the tenant entered into evidence. Tenant R.O. presented the landlord's statement, which states in part:

....This address is made up of Fourplex (Unit#1~4) and house (Unit#5), and it was the first day of the transfer, so I hoped to have a good relationship and tried by best. I proposed an agreed Residential Tenancy Agreement and the Fourplex tenants gladly agreed and signed it with me. However, [Tenant R.O.], the tenant of the house (Unit#5), did not sign it, saying she should look further into the Residential Tenancy Agreement....

....Then I politely asked her an update on the Residential Tenancy Agreement I gave her yesterday and she had declined to sign. After going through these circumstances, I decided to move to Unit 5 in the Second House I bought. Because I sold the house that I live in on December 15, 2021, and awaiting completion, I have to move by Dec 5th, 2022 (Evidence 5). So I decided to move to Unit#5 [address of subject rental property], and delivered the 2 Months Notice to End Tenancy for Landlord's Use of Property (#RTB-32) directly to [Tenant R.O.] (Evidence 6)....

Tenant R.O. referred to the landlord's realtor's statement, which both the landlord and the tenant entered into evidence. Tenant R.O. presented the realtor's statement, which states in part:

....[The landlord] had informed me that all leases were to remain the same as with the previous owner. All tenants had signed the lease agreements presented

by the landlord [name redacted for privacy] on April 1st, except for [Tenant R.O.] who to my understanding needed time to review the lease agreement and will have the information back by April 2nd the following day. [Tenant R.O.] confirmed this on the phone call detailed below. To this day the lease agreement remains unreviewed....

Tenant R.O. testified that the above statement shows that the landlord did not initially intend on moving in as all leases were to remain the same and only chose to evict her when she didn't immediately sign the tenancy agreement provided by the landlord.

Tenant R.O. presented an email from the landlord to the previous landlord dated July 14, 2022 which states in part:

Unfortunately, I didn't receive information from you and the realtors that tenant R.O, didn't sign the Unit #5 Residential Tenancy Agreement (RTA) when I made the purchase. I would have asked you to sign your [Tenant R.O.'s] RTA before I bought it if you had provided me with the correct information. Also, if [Tenant R.O.] had turned down your signature request, I would have put [Tenant R.O.] out of Unit#5 as a condition of purchase. I gave [Tenant R.O.] a 2 month notice because unit #5 is the best for me to move in....

The landlord testified that the main point is that he plans on moving in. The landlord testified that he has sold his house and is waiting on completion.

The landlord testified that in an email dated July 23, 2022, he confirmed that he wants to live on the property. The July 23, 2022 email to tenant R.O. states that the landlord plans to live in the subject rental property "in the future to build houses on the rest of the land on the two titles of [the subject rental property address]."

The landlord testified that in February of 2022 he sent a "Request for Access to Records" request to the Regional District requesting information on the property which shows he was interested in developing the property. The "Request for Access to Records" request was entered into evidence and is dated February 16, 2022. The "Request for Access to Records" request does not mention anything about the landlord residing at the subject rental property.

The landlord testified that on February 25, 2022 he sent an email to the subject rental city which confirms he intends on living on the property. The February 25, 2022 email

was entered into evidence and states:

I'm thinking of asking you more questions,
so I'd like to know.

About Separate Garage(Shed) is built in Lot 32 :

If I can't build a house by removing what's in the separate garage(shed), could I
convert the existing shed built on Lot 32 into a hut that can be used on weekends
and vacations?

If the renovation is permitted, I will apply for a permit according to the RDEK
regulations and renovate it with a renovation specialist who has a
license(certificate).

Thank you for your consideration

The landlord testified that his pre- April 2022 communications with the subject rental city
show that he is acting in good faith.

Analysis

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in
good faith to move in themselves or allow a close family member to move into the unit.

Based on the Notice entered into evidence and the testimony of both parties, I find that
the Notice was served to the tenant on April 2, 2022, in accordance with section 88 of
the *Act*.

Section 49(8)(a) of the *Act* states:

(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

The tenant filed to dispute the Notice on April 4, 2022. I find that the tenant filed to
dispute the Notice in accordance with the timelines set out in section 49(8)(a) of the *Act*.

Residential Tenancy Policy Guideline 2A states:

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.

The landlord testified that his intention from the start was to live at the subject rental property. Both parties agree that the landlord asked the tenant to sign a tenancy agreement on April 1, 2022. The written statement of the landlord's realtor states: "[The landlord] had informed me that all leases were to remain the same as with the previous owner." Based on the landlord's written statement, the realtor's written statement and the fact that the landlord asked the tenant to sign a tenancy agreement before the Notice was served, I find, on a balance of probabilities, that the landlord did not intend on occupying the subject rental property when the subject rental property was purchased or when the tenant was asked to sign a new tenancy agreement on April 1, 2022.

I find that if the landlord had originally intended on moving into the subject rental property, he would not have asked the tenant to sign a new tenancy agreement on April 1, 2022. I also note that the landlord entered into the sale of his home before he purchased the subject rental property and had he intended to move into the subject rental property, he could have had the previous landlord's serve the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property.

I find that the landlord's communications with the subject rental city and regional district do not show that he had any intention of moving into the subject rental property but show he was interested in developing it. I find that it is possible to develop the subject rental property without residing in the subject rental property.

Based on the text messages entered into evidence, tenant R.O.'s testimony and the realtor's statement, I find, on a balance of probabilities, that the landlord decided to evict the tenants because they did not sign the tenancy agreement as requested. I note that the tenants were under no legal obligation to sign a new tenancy agreement with the landlord. I find that while the landlord may now want to move in, the landlord had an ulterior motive in serving the tenant with the Notice, in that he wanted the tenant out because she did not do what he wanted (to sign a tenancy agreement), even though the tenant was under no legal obligation to do so.

The landlord's statement states in part:

....Then I politely asked her an update on the Residential Tenancy Agreement I gave her yesterday and she had declined to sign. After going through these circumstances, I decided to move to Unit 5 in the Second House I bought....

I find the above statement clearly shows that the landlord decided to evict the tenant and move in because she would not immediately sign the tenancy agreement he provided. I find that the Notice was issued in bad faith because the landlord had an ulterior motive in serving it. I find that the landlord served the Notice because he wanted to evict the tenant, not because he always planned to move into the subject rental property. Pursuant to section 49(3) of the *Act*, I cancel the Notice and find that it has not force or effect.

The tenancy will continue on in accordance with the *Act*.

Conclusion

The Notice is cancelled and of no force or effect.

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: August 9, 2022

Residential Tenancy Branch