Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, CNQ, CNL, DRI, OLC, FFT

Introduction

On April 9, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*), seeking to dispute a rent increase pursuant to Section 41 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 27, 2022, the Tenants amended their Application seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit pursuant to Section 49.1 of the *Act* and seeking an Order to comply pursuant to Section 62 of the *Act*.

Tenant M.B. attended the hearing. The Landlord attended the hearing as well, with her son Q.L. attending as her agent, with J.Y. attending as her translator, and with L.Z. attending also as an 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. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that their Notice of Hearing and evidence package was served to the Landlord by registered mail on or around April 21, 2022, and Q.L. confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections

89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing and evidence package. As the Tenants' evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant then advised that their amendment was served to L.Z. by email near the end of April 2022, and L.Z. confirmed receiving this. As such, I am satisfied that the Landlord was sufficiently served the Tenants' amendment.

L.Z. then advised that the Landlord's evidence was served to the Tenants by registered mail on May 12, 2022, and the Tenant confirmed receipt of this evidence. As well, while it appeared as if the Landlord had submitted additional evidence to the Residential Tenancy Branch on August 3, 2022, no one from the Landlord's side was familiar with what this was, nor did they know who submitted it. Based on this undisputed testimony, I am satisfied that the Landlord's evidence sent on May 12, 2022, was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision. However, as no one from the Landlord's side was aware of the documentary evidence package of August 3, 2022, this evidence was excluded and will not be considered when rendering this Decision.

At the outset of the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. Furthermore, all parties acknowledged that neither a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit or a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit were ever served to the Tenants. Moreover, they also confirmed that the only notice ever served to the Tenants was a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). As such, all parties agreed that this hearing would primarily address the Tenants' request to cancel the Notice pursuant to Section 49 of the *Act*. The Tenant was informed that their other claims would be dismissed, and that they are at liberty to apply for any claims under a new and separate Application.

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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants 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.

All parties agreed that the tenancy started on May 31, 2021, as a fixed term tenancy of one year, ending on May 31, 2022. After this point, the tenancy automatically reverted to a month-to-month tenancy. Rent was established at an amount of $2,900.00 per month and was due on the first day of each month. A security deposit of $1,450.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

L.Z. advised that the Notice was served to the Tenants by registered mail on April 6, 2022, and the Tenants clearly received this Notice as they disputed it on April 9, 2022. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the Landlord indicated that it would be "The child of the landlord or landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted on the Notice as August 15, 2022.

J.Y. advised that the Landlord was going to give the rental unit to her son's daughter to

use because she had been accepted into UBC, and that the rental unit was close to campus. L.Z. reiterated that the Landlord's granddaughter was accepted to UBC, so this would allow her to live close to campus. She referenced the documentary evidence of the UBC acceptance letter to support this position. The Landlord's side was asked if they had any additional submissions to make or if they wanted to point me to any other documentary evidence to support their submissions; however, they declined to do so.

Given that they provided very little information pertaining to the reason the Notice was served, it was necessary to ask them questions to confirm the validity of the Notice. Q.L. was the son of the Landlord, and he confirmed that he lived in a three-bedroom home with his wife and his mother, the Landlord. He stated that he had never been to the rental unit before and that he believed it was a two-bedroom unit, but he was not entirely sure. However, he acknowledged that the rental unit was for his daughter to occupy so that she could attend UBC.

When he was informed that the *Act* permitted this Notice to be served for the purpose of occupation "by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)", that the Landlord specifically indicated that "The child of the landlord or landlord's spouse" was to occupy the rental unit, and that his daughter would not be considered a close family member by definition of the *Act*, the submissions about the reason on the Notice slowly and repeatedly changed.

J.Y. then hinted that Q.L. would assist his daughter in moving and acclimating to living on her own in the rental unit. However, it was evident that he was attempting to portray a scenario that was not truthful, as it was clear that there was no indication that Q.L. would move in to occupy the rental unit and assist his daughter.

When Q.L. was questioned about how it would make sense for him to move from a three-bedroom home into a rental unit that he has never seen before and where he was not even sure if it could accommodate him, his wife, and his daughter, he was unable to provide any answer. Given that this Notice was served on April 6, 2022, and as the effective end date of the end tenancy of August 15, 2022 was merely days away, he was asked multiple times what plans he had made to prepare to move into the rental unit over the last four plus months. However, he was unable to provide any answer and it was evident that no plans to move in had been made.

L.Z. then advised that Q.L. was prepared to purchase furniture and items to live in the rental unit after obtaining possession of the unit. She stated that he would live in his current home until the rental unit was ready to move in.

J.Y. then advised that Q.L. “anticipated” moving into the rental unit, but there were plans to do renovations, and then move into the rental unit after. However, there was no documentary evidence submitted to support this submission of required or needed renovations.

Q.L. testified that the rental unit was “brand new” as it was purchased approximately three years ago. As well, he stated that the Tenants were the only people to ever occupy the rental unit. When he was asked to elaborate on what renovations needed to be completed if it was brand new and was only rented once, for the last year, he was unable to provide any answers.

The Tenant advised that the agent for the Landlord informed her by text on March 31, 2022, that the rental unit could be rented for an additional year. However, the rent would be increased by $600.00 per month. She testified that she informed the agent that the Landlord was not permitted under the *Act* to increase the rent in the manner or the amount that was suggested. She stated that the Notice was then served shortly after this exchange. She referenced the documentary evidence submitted to support this position.

J.Y. confirmed that this agent was still under the Landlord’s employment when this text exchange was made; however, the agent’s contract ended at the end of March 2022.

L.Z. advised that she sent an email to the Tenants in early April 2022, informing them that she was the new contact for the Landlord.

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, or a close family member of the Landlord, intends in good faith

to occupy the rental unit. In addition, this Section of the *Act* outlines below what would be defined as a close family member that would be permitted to occupy the rental unit:

> ***"close family member"*** *means, in relation to an individual,*
>
> *(a)the individual's parent, spouse or child, or*
> *(b)the parent or child of that individual's spouse;*

Section 52 of the *Act* requires that any notice to end tenancy issued by the 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.

With respect to the Notice, in considering the Landlord's reason 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.

I also find it important to note that 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."

When reviewing the totality of the evidence and testimony before me, I first find it important to note that the Landlord's side initially provided extremely limited detail about the validity of the reason for service of the Notice, and that their submissions pertained to the granddaughter needing to occupy the rental unit due to its proximity to UBC. They were then asked if they wanted to provide any more details or information about the specifics of who would occupy the rental unit, but they stated that they had no further submissions.

It was at this point then that the Landlord's side was informed that the definition of close family member would not include the granddaughter, and that Q.L. would be a party that would be permitted to occupy the rental unit based on this Notice. Once this information was relayed to them, it was then that J.Y., Q.L., and L.Z. suddenly all made varying submissions about how Q.L. would be occupying the rental unit.

Firstly, I am doubtful that it was truly the Landlord's intention for Q.L. to occupy the rental unit, and then have his daughter move in with him, when the Notice was served because they did not state this when they made their initial submissions, and only brought this up after being informed of who would be considered a close family member as defined by the *Act*. While L.Z. did later note that this intention was mentioned in the submitted "Statement of Facts" that the "unit will be occupied by the landlord's close family member (her son)", I find it curious why no submissions were made about this until after I explained the definition of close family member.

Secondly, J.Y. then provided vague details about Q.L. moving into the rental unit, but it was clear that he was simply suggesting that Q.L. would assist his daughter in living by herself. However, it was abundantly evident that he was attempting to avoid overtly stating that Q.L. would actually move into the rental unit as well.

Thirdly, Q.L. acknowledged that he had never seen the rental unit before and that he did not know for certain how many bedrooms it contained. Given that this Notice was served over four months ago, I find it curious that if he had planned to occupy the rental unit, that he would not have ever had notice given to inspect the rental unit to determine if it would even be feasible for him to move in.

Moreover, given the fact that the effective end date of the tenancy on the Notice was less than a week away, it would be reasonable to expect that Q.L. would have formulated some plans to move into the rental unit. However, there were no such plans made. While they suggested that they needed to renovate the rental unit first, I find this dubious as the rental unit was virtually brand new, and any renovations would have been unlikely to have been required. Furthermore, there were never any inspections of the rental unit conducted prior to or since the Notice was served to even determine if renovations were actually required. In addition, there was no documentary evidence submitted to demonstrate that plans were ever initiated to conduct renovations after the effective date of the Notice. As well, I find it extremely dubious that Q.L. was waiting to obtain possession of the rental unit first, before determining what furniture etc. was required to be purchased before moving in to occupy the rental unit.

In assessing the Landlord's sides' testimony, it was evident that they were of the belief that the granddaughter would meet the definition of close family member under the *Act*. However, when it was brought to their attention that in order for the granddaughter to occupy the rental unit based on the reason on the Notice, it would actually have to be Q.L. that moved in and brought her along as well, it was apparent that every member of the Landlord's side then began crafting varying submissions in an obvious attempt to suggest that Q.L. would actually be moving into the rental unit. In my view, none of the above explanations provided by the Landlord's side are logical, nor are they consistent with common sense or ordinary human experience. It was clearly evident that the testimony provided was crafted spontaneously after realizing that the granddaughter would not be considered a close family member, and these were obvious attempts to fabricate a portrayal of a different intention in the hopes of obtaining a favourable Decision.

This proceeding went well over the allotted one-hour hearing time and the Landlord's side was afforded with ample opportunity to provide submissions with respect to the validity of the reason on the Notice. However, it became clear that the more time they were granted to make additional submissions, the more rapidly changing/evolving, contradictory, dubious, and illogical testimony would be provided. As such, I find the credibility, legitimacy, and truthfulness of J.Y., Q.L., and L.Z.'s testimony to be highly suspect and unreliable. As such, I give no weight to the persuasiveness of their evidence.

While it may be entirely possible that it was the intention that the granddaughter would occupy the rental unit, this person could not occupy it solely as she would not be considered a close family member as defined by the *Act*. Furthermore, in my view, it is beyond obvious that there was no intention for Q.L. to move with his daughter, from his home, into the rental unit to occupy for at least six months after the effective date of the Notice, as required by the *Act*.

In the alternative, given the doubts created by the questionable and dubious testimony from the Landlord's side, I also cannot rule out the possibility that this Notice was given in bad faith, that it was served due to the Tenants advising the Landlord that the request for a significant rent increase was illegal, and that the Landlord would have simply then in turn rented the unit out to a new tenant at a substantially higher amount of rent after the effective date of the Notice. The Landlord is cautioned that in doing so, she may be subject to a claim of 12 months' compensation against her should this possible scenario play out that way.

Based on my assessment of the evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord served this Notice in good faith. As such, I find that the Notice of April 6, 2022 is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the $100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property of April 6, 2022 to be 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 10, 2022

Residential Tenancy Branch