Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARPER FAMILY HOLDINGS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

On May 3, 2022, the Tenants 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 of the *Residential Tenancy Act* (the "*Act*) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant C.S. attended the hearing, with K.S. attending as an advocate for the Tenants. H.H. and C.H. attended the hearing as agents for the Landlord, and co-owners of the rental unit. H.H. advised that the Landlord should be noted as the company name, and the Tenant had no opposition to this. As such, the Style of Cause on the first page of this Decision has been amended to reflect this change.

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 package, and some evidence, was served to the Landlord by registered mail on May 13, 2022. As well, additional evidence was served to the Landlord by registered mail on August 14 and August 24, 2022. H.H. confirmed receipt of the Notice of Hearing package, and some evidence, prior to May 18, 2022. As well, he acknowledged that he had received the additional evidence, and

that he was prepared to respond to it. Based on this undisputed testimony, I am satisfied that the Landlord was duly served with the Notice of Hearing and evidence packages. As such, I have accepted the Tenants' documentary evidence, and will consider it when rendering this Decision.

H.H. advised that the Landlord's evidence was served to the Tenants by registered mail; however, he was not sure of the date that this was done, but it was more than three weeks prior to the hearing. The Tenant confirmed receipt of this evidence, and while she claimed that it was not sent by registered mail, she acknowledged that it was received more than three weeks ago. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

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 1, 2016, with a previous owner, that rent was currently established at an amount of $940.50 per month, and that it was due on the first day of each month. A security deposit of $435.00 and a pet damage deposit of $100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

H.H. advised that the Notice was served to Tenant J.F. by hand on May 2 or 3, 2022. The Tenants clearly received this Notice as they disputed it on May 3, 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 specifically 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 July 31, 2022.

The parties were informed that the burden of proof, when this type of Notice is disputed, rests with the Landlord who issued the Notice to substantiate that the rental unit will be used for the stated purpose. As such, they were apprised that the Landlord would have the opportunity to make submissions first, and then when the Landlord was done, the Tenant would have an opportunity to respond.

H.H. advised that C.H. was a co-owner of the rental unit, and he referenced documentary evidence submitted to support that position. He then stated that she would be moving into the rental unit, and he quoted the relevant legislation that applied to this situation.

After these extremely limited statements, he was asked if he wished to make any more submissions or point to any documentary evidence to help support this position. At this suggestion, H.H. appeared to become defensive or angered at the prospect of having to expound upon his rudimentary submissions and provide any further detail about the background for service of the Notice. He was again reminded that the burden of proof is on him to provide submissions proving his case, on a balance of probabilities.

He then referenced a tenancy of C.H. that she was forced to give up because her roommates purportedly moved out, and she was unable to afford the rent on her own. He stated that this tenancy ended on July 31, 2022, and that C.H. knew that this tenancy would be ending prior to the end of July 2022. When he was pressed on

precisely when they were aware of this fact, he then eventually testified that they were aware of this prior to when the Notice was served.

He then referenced a new tenancy agreement for this old property that C.H. had previously rented. He noted that the new tenancy was to commence on September 1, 2022, and that the gap in time between when C.H.'s old tenancy ended, and when this new tenancy began was due to having to prepare this unit for the new tenants. On this new tenancy agreement, submitted as documentary evidence, he redacted the new tenants' names with "Privacy Protected"; however, he neglected to do so on the last page of the tenancy agreement. Curiously, he also redacted the amount of rent, security deposit, and pet damage deposit as "Privacy Protected" as well.

He subsequently referenced the tenancy agreement that C.H. signed for the rental unit, that was to commence on August 1, 2022. He stated that C.H. changed her mailing address to that of the rental unit, and that she put the rental unit's hydro account in her name. This tenancy agreement was signed on May 18, 2022, and he indicated that this was signed at this time only because he was then informed of the Tenants' dispute of the Notice. He testified that there was no reason to sign this tenancy agreement before, as they did not anticipate that the Notice would be disputed. He stated that C.H. is currently living in his basement, awaiting resolution of this dispute.

The Tenant advised that she received an email on January 13, 2022, from the previous owner, informing them of the change in ownership. She stated that the only communication she received from the Landlord was on May 2, 2022, when the Notice was served. She testified that she called H.H. that day to discuss the Notice, and she referenced her documentary evidence submitted that depicts her perspective of the conversation. It was her belief that when she questioned H.H. about the validity of the Notice, he became "defensive" or "evasive" and hung up the phone.

She then submitted that she recently found a letter in J.F.'s possession, dated January 13, 2022, where the Landlord introduced themselves, indicated that they "have no immediate plans for further upgrades to the building, but have long range plans to make each suite better and more modern.", and that a rent increase may be effected as of May 1, 2022. This letter was entered into evidence for consideration. She stated that J.F. informed her that she was asked to leave the rental unit at some point so that contractors could come in and view the rental unit for potential renovations. She indicated that this was "foreshadowing", and it is her belief that the Landlord could be planning to renovate the rental unit instead.

Finally, she referenced an Application for Dispute Resolution that the Landlord has made against them for the costs related to storage of C.H.'s property. However, these costs for storage included June, July, August, and September 2022.

H.H. advised that the January 13, 2022, letter has nothing to do with this dispute, and he questioned why the matters regarding the Landlord's Application for monetary compensation were being raised as they were a separate issue. He was informed that the Tenant entered these storage receipts into evidence and raised this issue as related to her concerns with the legitimacy of the Notice being served. H.H. struggled to provide any rational submissions for these claims or why he would be asking for compensation for June and July 2022 when C.H.'s tenancy was still current, and for the period of time where the effective end date Tenants' tenancy had not yet even elapsed. He stated that C.H. was forced to store her property because there was not enough room to do so in his basement. Yet, he could still not provide any clear answer for why the Tenants should be responsible for these two, specific months of compensation.

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, as highlighted above, that the burden of proof lies on the Landlord who issued the Notice, to provide sufficient evidence, over and above their testimony, 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."

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and testimony before me, I first find it important to note that H.H. initially provided extremely limited detail about the validity of the reason for service of the Notice, and it was apparent that he was merely, for the most part, reciting the legislation verbatim to satisfy the grounds for the Notice. It should be noted that when he was asked if he wished to make any more submissions or point to any documentary evidence to help support this position, his demeanour seemingly became antagonistic or hostile, as if he was surprised that his perfunctory submissions were not sufficient, and was shocked that he should be required to elaborate on the details of why the Notice was served.

It is not entirely clear why H.H.'s demeanour and tenor changed, but it became fairly obvious as the hearing progressed that he did not expect that he would have to provide submissions justifying the reason for service of the Notice or that any submissions may

be weighed on a balance of probabilities. It was clear that his expectation was that it would be sufficient to note that C.H. was the co-owner of the rental unit, then simply recite the legislation, and have this dispute dismissed. However, as noted above, when there is some doubt raised pertaining to good faith, the burden rests on the Landlord to prove. In conjunction with some doubts below, I find that H.H.'s change in attitude and demeanour caused me to doubt the reliability of his testimony, and I am satisfied that this belied his true intent when the Notice was served.

I note that H.H. referenced a previous tenancy agreement of C.H., which she was allegedly forced to move from. However, there was no documentary evidence submitted to support his testimony of the existence of this tenancy or why it ended. Moreover, H.H.'s vague, initial testimony of when they were aware that this tenancy was going to end eventually, and conveniently, landed on a date prior to when the Notice was served. Furthermore, C.H. was in attendance for this hearing and she did not provide any submissions to corroborate any of these accounts.

Additionally, H.H. referenced a new tenancy agreement with new tenants for that same property, and he was listed on that agreement as one of the Landlords. As such, I can reasonably infer from this that he was also then one of the Landlords on C.H.'s previous tenancy that had just ended. I note this because the connection between him and C.H. appears to me to be suspicious, especially given that H.H. testified that C.H.'s tenancy ended because she could not afford the rent. However, on this new tenancy agreement, the rent, security deposit, and pet damage deposit amounts have been curiously redacted as "Privacy Protected" for some reason. I can understand why the identities of the new parties would be redacted for privacy purposes, but it is not clear to me what privacy concerns the rent, security deposit, and pet damage deposit would create.

Based on the increasing doubtfulness of H.H.'s submissions, I find it more likely than not that the rent, security deposit, and pet damage deposit amounts were redacted to mask how much was paid by the new tenants, and to suppress any information regarding what C.H. may have been paying in rent for that unit so that his testimony about the tenancy ending due to apparent rent issues could not be questioned. Again, C.H. was in attendance for this hearing and she did not provide any submissions that could have easily corroborated any of these submissions.

I also note that H.H. testified that C.H. changed her mailing address to that of the rental unit, that she put the hydro account into her name, and that she currently resides in his basement. Yet, there has been no documentary evidence submitted to support any of

these claims. Furthermore, C.H. could have provided testimony to verify any of these statements; however, she did not. It was even noted during the hearing that while it was not required, it appeared peculiar that C.H. had not provided any testimony at all.

I find that the most curious aspect to this whole dispute is that C.H. did not make a single submission regarding why this Notice was served. Given that she was the person that this situation would have directly affected, it is not clear to me why she never provided any testimony to corroborate why her previous tenancy allegedly ended, or to substantiate any of H.H.'s submissions. More importantly, it is evident that the Landlord owns several properties; however, neither H.H. nor C.H. ever provided any testimony for why they chose this specific, particular rental unit as the one that C.H. would apparently move into.

Considering the evidence and testimony in their totality, I do not find that H.H. provided consistent, logical testimony that was supported with documentary evidence, or with any solemnly affirmed testimony from C.H. I found H.H. to be evasive, and his tenor to be oddly argumentative. This was especially apparent when he did not want to address the issue of storage compensation that was raised by the Tenant. It is still not clear to me why he would store C.H.'s property in June or July 2022 when her tenancy had not yet ended, nor does it make any logical sense why he would then attempt to pursue the Tenants for this storage cost when the effective date of the Notice had also not yet come into effect.

Based on all the above doubts I have with H.H.'s submissions, I am satisfied, on a balance of probabilities, that the Landlord did not serve this Notice in good faith on May 2, 2022, for C.H. to move into the rental unit. I find it more likely than not that it was only when it was discovered that the Tenants had disputed the Notice that a false narrative was then created of C.H. needing to move into the rental unit, which conveniently fit the grounds for ending the tenancy. Given that the Landlord owned these multiple properties, it appeared to ease the ability for the Landlord to manipulate the situation to fit this narrative.

While it may be entirely possible that C.H. is now currently living in H.H.'s basement, I find that this was as a result of H.H.'s manoeuvring in an attempt to justify the grounds on the Notice after it was disputed. I also find that this likely explains why H.H. was so adamant that they are complying with the *Act* with respect to C.H. moving in. However, as noted above, I find that this purpose was manufactured only after the Notice was served, and subsequently disputed. As such, I find that the credibility, legitimacy, and

truthfulness of H.H.'s testimony to be highly suspect and unreliable. Consequently, I give no weight to the persuasiveness of the Landlord's evidence.

Ultimately, I find that the Notice of May 2, 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 May 2, 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: September 7, 2022

Residential Tenancy Branch