Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT

Introduction

This hearing originally convened on October 28, 2022 and was adjourned to November 8, 2022 in an Interim Decision dated October 31, 2022. This decision should be read in conjunction with the Interim Decision. This hearing dealt with the tenant's 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 (the "Notice"), pursuant to section 49; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

In the first hearing the tenant, the tenant's advocate/support person, and the landlord's agent ("agent G.C.") attended and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

In the second hearing, the tenant, the tenant's advocate/support person, and the landlord's agent ("agent G.S.") attended and were each given a full opportunity to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised, in each hearing, that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording these dispute resolution hearings.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Jurisdiction

Both parties agree that the subject rental property is a two-bedroom basement suite in a house and the landlord resides in the main portion of the house. Both parties agree that prior to moving into the subject rental property, the tenant resided in a laneway house next to the subject rental property. Both parties agree that the landlord owns both the main house and the laneway house.

In the first hearing the tenant testified that when he and the landlord discussed him moving from the laneway house into the basement suite of the main house, the landlord agreed on the condition that she retain use of one of the two bedrooms in the subject rental property. Further testimony on this point was not provided in the first hearing. This hearing was reconvened to determine if section 4(c) of the *Act* prevented the *Act* from applying.

Section 4 (c) of the *Act* states:

> **4** This Act does not apply to
>
> (c)living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

In the second hearing both parties agreed that the bedroom retained by the landlord has two doors, one to the landlord's unit and one to the subject rental property. Both parties agreed that the door between the bedroom and the subject rental property is locked, and the landlord does not have access to the tenant's unit and the parties do not share a kitchen or bathroom. Both parties agree that the landlord has exclusive use and occupancy of the bedroom, which is accessed from the landlord's unit.

Based on the testimony of both parties, I find that the landlord and the tenant did not share a kitchen or a bathroom and that I have jurisdiction to hear this application for dispute resolution.

Preliminary Issue- Amendments

In the second hearing agent G.S. testified that the landlord's last name is spelt incorrectly on the tenant's application for dispute resolution. The agent provided the correctly spelling of the landlord's last name. In the hearing, pursuant to section 64 of

the *Act,* I amended the tenant's application for dispute resolution to correctly spell the landlord's last name. The tenant did not object to the amendment.

Both parties agree that the subject rental property is a basement suite. The basement prefix was not provided in the address for the subject rental property in this application for dispute resolution. Pursuant to section 64 of the *Act,* I amend the application for dispute resolution to include the prefix "basement" in the address of the subject rental property.

Preliminary Issue- Service

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the tenant's application was served in accordance with section 89 of the *Act.*

Agent G.C. testified that the tenant was served with the landlord's evidence via registered mail on October 3, 2022. The tenant testified that he received the landlord's evidence on October 18th or 19th, 2022. Agent G.C. testified that according to the registered mail tracking, the tenant received the above package on October 7, 2022. I find that regardless of whether the tenant received the evidence on October 7 or October 19, 2022, the landlord's evidence was served in accordance with the Residential Tenancy Branch Rules of Procedure and section 88 of the *Act.* The landlord's evidence is accepted for consideration.

During the first hearing the tenant testified that he served his evidence on the landlord via registered mail on Tuesday October 25, 2022, but that at the time of the first hearing, the registered mail had not yet been delivered. At the first hearing agent G.C. testified that the landlord had not received any evidence from the tenant and that the landlord sought to have the tenant's evidence excluded as the landlord has not had an opportunity to review it.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the original hearing.

I find that the tenant did not serve the landlord in accordance with Rule 3.14 of the Rules as the tenant's evidence was mailed only two clear days before the first hearing

and the landlord did not receive it in advance of the first hearing. I find that it would be procedurally unfair to accept the tenant's evidence for consideration because the landlord did not have an opportunity to review and respond to that evidence prior to the first hearing. The tenant's evidence is therefore excluded from consideration.

Preliminary Issue- Particulars of Monetary Claim

The landlord's application for dispute resolution claimed $25,000.00; however, the application for dispute resolution did not provide any particulars of this claim, the field for particulars on the application for dispute resolution was left blank.

Section 59(2)(b) of the *Act* states:

> 59(2)(b) An application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

Section 59(5)(c) of the *Act* states:

> 59(5)(c) The director may refuse to accept an application for dispute resolution if the application does not comply with subsection (2).

As the tenant did not provide any details of the tenant's monetary claim in the application for dispute resolution, I find that the tenant did not provide the full particulars of the claim. I find that it would be procedurally unfair to the landlord to accept the tenant's application for monetary compensation as the landlord has not been provided with a full opportunity to respond to the tenant's claim because the tenant has not provided the particulars of that claim. Pursuant to section 59(5)(c) of the *Act,* I refuse to accept the tenant's application for a Monetary Order for damage and compensation. The tenant has leave to reapply; the tenant is cautioned to provide the full particulars of any future claim.

Issue 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*?

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 and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved into the laneway house on July 2, 2021; at that time the main house and the laneway house were owned by a different landlord. Monthly rent in the amount of $1,375.00 for the laneway house was payable on the first day of each month. The laneway house tenancy was a month-to-month tenancy. The landlord entered into evidence the tenancy agreement for the laneway tenancy.

Both parties agree to the following facts. The tenant moved into the subject rental property in March of 2022. A new tenancy agreement was not signed, the new tenancy agreement was verbal. Rent remained $1,375.00 per month and the term of the tenancy remained month to month.

Both parties agree that the tenant was personally served with the Notice on May 25, 2022. The Notice was entered into evidence, is signed by the landlord, is dated May 25, 2022, gives the address of the rental unit, states that the effective date of the notice is July 25, 2022, is in the approved form, #RTB-32, and states the following ground for ending the tenancy:

> The rental unit will be occupied by the child of the landlord or landlord's spouse.

The rental address listed on the Notice does not state the pre-fix "basement".

Agent G.C. testified that the landlord and her mother ("A.K.") are co-owners of the subject rental property and currently reside in the upper suite, above the subject rental property. Agent G.C. testified that the landlord's mother is elderly and should no longer be left alone while the landlord attends work outside the home. Agent G.C. submitted

that the Notice was served because the landlord's sister is going to move into the subject rental property. Agent G.C. submitted that the landlord's sister works from home and can assist her mother whenever needed.

Agent G.C. presented a signed affidavit from the landlord's mother which states:

> I am 74 years old and presently living [in unit above subject rental property]. I live with my daughter [J.K.] and we co-own the house. I have some serious health issues that require near -constant care. I require full time care to assist and monitor me for safety. We have a lower suite in our house that my other daughter, [P.K.K.], must occupy. My daughter [J.K.] is a school teacher and cannot be home as often as needed. My daughter [P.K.K.] works from home and would be available full time when I need her help. I have been told by my physician [name redacted for privacy] this move is needed immediately for my safety. I will need this care from this point forward. [P.K.K.] will move into the suite and live and work form the home, as soon as we are able.

The landlord entered into evidence a letter from A.K.'s doctor which states:

> [J.K.] works full time from 8:15 am- 4:00 pm. She resides alone with her mother, [A.K.], who suffers multiple co-morbidities and is 74 years old. Her mother needs constant care, she has had multiple falls, gets dizzy and has blurred vision. She cannot be left alone in the house.
>
> [J.K.] needs her sister, [P.K.K.], who works from home, to reside in the 1 bedroom basement suite to take care of their mother while she is at work.
>
> [J.K.] also suffers muscloskeletal pains and headaches and is under a lot of stress. She needs support from her sister.

The landlord entered into evidence a signed affidavit from P.K.K. which states:

> I am presently living and working from my home at [redacted for privacy]. My residence is 8.2 km away (20 mins drive) from my mother's house. I need to move to [the subject rental property] in her house to assist her. My mother's doctor has stated she needs the constant presence of another person in the home for her safety. She suffers from numerous issues that cause falls, dizziness and blurred vision. We need to check on her every day. By living and working in

> the same house I would be available to assist her full time, as I work from home. My sister also lives there, but she is not home most days and some evenings with her work as a school teacher. I would be residing there for the foreseeable future and it is crucial that I do so.

The tenant testified that before moving from the laneway house to the basement, he asked the landlord if she was sure that her family wasn't going to need the subject rental property and that the landlord told him that her family did not need the subject rental property. The tenant testified that he requested to move into the subject rental property because it is larger than the laneway house and he wanted more space.

The tenant testified that he had multiple opportunities to move into different suites that had more space than the laneway house and he turned down those opportunities because of the landlord's assurances that he could live in the subject rental property and that the landlord's family did not need it. The tenant testified that he moved into the subject rental property in March 2022 and was served the Notice on May 25, 2022. The tenant submitted that the above timeline is unacceptable.

The tenant testified that the landlord's sister is not a close family member under the *Act* and so the Notice is not valid.

Analysis

Based on the testimony of both parties I find that the tenant was personally served with the Notice on May 25, 2022, in accordance with section 88 of the *Act.*

Section 68(1) of the *Act* states that if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

> (a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
>
> (b)in the circumstances, it is reasonable to amend the notice.

I find that the tenant knew or ought to have known that the prefix "basement" was missing from the rental address on the Notice. I find that the tenant was aware that he lived in the basement and not the main portion of the house. Therefore, in the

circumstances, I find that it is reasonable to amend the Notice to include the prefix “basement” in the address of the subject rental property on the Notice.

Upon review of the amended Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- states the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #32.

Section 49(3) of the *Act* states:

> (3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(1) of the *Act* defines a landlord as:

> (a)for the purposes of subsection (3), an individual who
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> (i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
>
> (ii)holds not less than 1/2 of the full reversionary interest,

Based on the signed affidavits from the landlord and A.K., I find that the landlord and A.K. are co-owners of the subject rental property. I find that as co-owners, both A.K. and the landlord meet the definition of landlord set out in section 49(1) of the *Act.*

Section 49(1) of the *Act* defines a close family member as:

> in relation to an individual,
>
> (a)the individual's parent, spouse or child, or
>
> (b)the parent or child of that individual's spouse;

I find that A.K., a landlord as defined by section 49(1) of the *Act*, was permitted under section 49(3) of the *Act* to serve the tenant with the Notice, for the purpose of her child moving in. Based on the signed affidavits in evidence, I find that P.K.K. in A.K.’s child.

I note that while the landlord's name and not A.K.'s name is on the Notice, as co-owners the landlord was permitted to fill out the Notice with her name as agent for her mother/co-owner.

Based on the signed letter from A.K.'s doctor and the signed affidavits from the landlord, A.K., and P.K.K., I find that A.K. intends to end the tenancy with the tenant so that her child can move in to assist in taking care of her while she ages. Based on the doctor's letter and the signed affidavits, I find that A.K. and the landlord are acting in good faith in ending the tenancy, in accordance with section 49(3) of the *Act.*

I find that while the timing of the service of the Notice, that being shortly after the tenant moved into the subject rental property, is unfortunate, the timing and any previous assurances of the landlord, do not prevent the service of the Notice for the bone fide reason of having the child of an owner move into the subject rental property. I find that the tenant entered into a month-to-month tenancy which did not provide the tenant with a contractual guarantee that the tenancy would not end pursuant to section 49(3) of the *Act.* I find that the circumstances of families can change due to health issues that are rarely planned for.

Pursuant to my above findings, I uphold the Notice and dismiss the tenant's application to cancel the Notice, without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

> (a)the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
>
> (b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the amended Notice complies with section 52 of the *Act,* the Notice was upheld and the tenant's application to cancel the Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 8, 2022

Residential Tenancy Branch