Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL MNDCT RR RP OLC**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") made by the Tenant under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- an order to cancel a Notice to End Tenancy for Landlord's Use of Property dated July 2, 2022 ("2 Month Notice") pursuant to section 49;
- a monetary for compensation from the Landlord pursuant to section 67;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62.

The Landlord, the Landlord's advocate ("MY"), the Tenant and the Tenant's advocate ("NB") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence (collectively the "NDRP Package") in the Landlord's mailbox. The NDRP Package was not served in accordance with any of the methods of service permitted by section 89 of the Act. However, the Landlord acknowledged receipt of the NDRP Package. As such, I find the NDRP Package was sufficiently served on the Landlord pursuant to the provisions of section 71(2)(b) of the Act.

Preliminary Matter – Late Service of Landlord's Evidence on Tenant

MY stated the Landlord served her evidence in the Tenant's mailbox on November 27, 2022.

Rule 3.15 of the RoP states:

> **3.15 Respondent's evidence provided in single package**
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> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
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> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
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> See also Rules 3.7 and 3.10.

Section 90 of the Act states:

> 90 A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]*, unless earlier received, is deemed to be received as follows:
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> (a) if given or served by mail, on the fifth day after it is mailed;
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> (b) if given or served by fax, on the third day after it is faxed;
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> (c) if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;
>
> (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.

The RoP defines “Days” as follows:

> Days:
>
> a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
> b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
> c) *In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.*
> d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.
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> [emphasis in italics added]

The Landlord’s evidence was served on the Tenant’s door on November 27, 2022. Pursuant to section 90 of the Act, the Landlord’s’ evidence was deemed to have been received by the Tenant on November 30, 2022. As such, after accounting for deemed service of the Landlord’s evidence on the Tenants on November 30, 2022, and after excluding the first and last day after deemed service of the evidence on the Tenant, I find the Landlord’s evidence was not served on the Tenant at least seven days before this hearing as required by Rule 3.15 of the RoP. As such, I find the Landlord’s evidence is not admissible for this proceeding.

Preliminary Matter – Severance and Dismissal of Tenant’s Claims

At the outset of the hearing, I observed the Application included claims for an order for (i) a monetary for compensation from the Landlord; (ii) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; (iii) an order requiring the Landlord to complete repairs to the rental unit; and (iv) an order for the Landlord comply with the Act, the Regulations and/or tenancy agreement (the “Tenant’s Other Claims”).

Rule 2.3 of the Rules states:

> 2.3 **Related issues**
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> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

This hearing was scheduled for one hour. At the outset of the hearing, I advised the parties that the primary issues in the Application were whether the Landlord was entitled to an Order of Possession for the rental unit. As such, I find the Tenant's Other Claims are not sufficiently related to the primary issue before me. Based on the above, I will dismiss the Tenant's Other Claims, with or without leave to reapply, depending upon whether I cancel the 2 Moth Notice or issue an Order of Possession for the rental unit to the Landlord.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If I do not cancel the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord stated she purchased the property in April 2008 and was not provided with a copy of a tenancy agreement by the previous owner. The Tenant states she did not sign a tenancy agreement and that the copy she was provided by the Landlord with her signature was a forgery. Notwithstanding this disagreement, the parties agreed the tenancy commenced on October 21, 1999 with rent of $300.00 payable on the 1st day of each month. The parties agreed the current rent is $560.00. The parties confirmed the

Tenant was not required to pay a security and/or pet damage deposit. The Landlord stated the Tenant did not have any rental arrears. Based on the foregoing, I find there is a tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

The Landlord stated the 2 Month Notice was served on the Tenant in-person on July 2, 2022. The Tenant acknowledged she received the 2 Month Notice from the Landlord. I find the Tenant was served with the 2 Month Notice in accordance with the provisions of section 88 of the Act. The 2 Month Notice stated the reason for ending the tenancy was for the use of the child of the landlord or the landlord's souse.

MY stated the Landlord's son and his girlfriend intend to move into the rental unit. The Landlord stated her son is currently residing with her in an unfinished basement. The Landlord stated the rental unit is located in a small town and that it would be obvious to people if her son and his girlfriend did not move into the rental unit. The Landlord stated the rental unit does require repairs. The Landlord stated she has been patiently waiting for the Tenant to leave the rental unit so that repairs could be performed. The Landlord stated the contractor that she has retained requires the Tenant to be out of the rental unit to do the repairs. The Landlord stated that the damage was caused by the Tenant. The Landlord stated it was her hope that the rental unit can be returned to her so that the repairs can be completed and for her son and his girlfriend to move into the rental unit to begin their life as a couple. The Landlord stated she is not lying because she has no desire to pay the Tenant 12 months worth of rent if she did not go through with her son and his girlfriend moving into the rental unit. When I asked the Landlord how long it would take to complete the repairs, she stated she was hoping that it would take one month. When I noted that the landlord or close family relative must move into the rental unit within a reasonable period of time after the effective date of a Two Month Notice, the Landlord stated she would attempt to get the repairs performed more quickly if the contractor can get the necessary supplies.

The Tenant stated she believed the Landlord was not acting in good faith. The Tenant stated NB wrote a letter ("Repair Letter") to the Landlord on November 29, 2021 that requested that the Landlord perform repairs on the inside and outside of the rental unit. The Tenant submitted into evidence a copy of the Repair Letter in which the following repairs were requested:

- black mold in the bathroom, covering walls and baseboards
- the mold in the cupboard under the kitchen sink

- a broken kitchen sink which leaks when I turn on the taps and water goes everywhere
- the toilet is broken and does not flush
- severe rodent infestation
- the porch roof is rotten and leaking
- bathroom floor has rotted through
- return hot water to my home

The Tenant stated that, of the repairs requested in the Repair Letter, the Landlord had on replaced the hot water tank on December 2, 2021. The Tenant submitted into evidence photos of the bathroom floor showing extensive deterioration, a rusted sink and bathtub, black mold on walls, a leaking u-trap for a sink, a damage floor elsewhere in the rental unit , rusted tap for kitchen sink, water stains on ceilings, rotten structural components of a ceiling and a rat trap. The Tenant stated she has been waiting for over a year for the other repairs to be performed by the Landlord. The Landlord acknowledged she received the Repair Letter and confirmed that the only repair listed in the Repair Letter was replacement of the hot water tank. The Landlord stated she had a furnace repaired on one occasion, which was not requested in the Letter.

NB stated the Landlord gave the Tenant a Four Month Notice to End Tenancy for Repairs ("4 Month Notice") in December 2021. NB stated the 4 Month Notice was not on the correct form that requires a Landlord to apply to the RTB for permission to serve the 4 Month Notice on the Tenant. NB stated the Landlord cancelled the 4 Month Notice and then served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("First 2 Month Notice"). NB stated the Tenant disputed the First 2 Month Notice and that it was cancelled by the arbitrator who heard the Tenant's application for dispute resolution on the basis that the Landlord was not acting in good faith. The Tenant stated the Landlord has not attempted to seek a rent increase for the rental unit.

The Tenant stated the Landlord called her on November 16, 2021 and told the Tenant that it was not safe for her to live in the rental unit because of the high levels of black mold, being the most dangerous of this type. The Tenant stated the Landlord told her that, by continue living in the rental unit, it is slowly killing her and that it was s serious health concern. The Tenant stated the Landlord told her that she had to find a professional specializing in black mold to remediate all of the mold in the bathroom and kitchen of the rental unit first. The Tenant stated that until the remediation of the mold was completed, the other contractors would come in to do any of the work and that she did not know what else to tell the Tenant. The Tenant stated that, by moving the

Landlord's son, his girlfriend and their pets into the rental unit as proposed by the Landlord, they would also be living in the same conditions as the Tenant is currently living.

The Tenant testified that, on November 13, 2021, the Landlord called and told her that, due to the extensive damage caused in the bathroom of the rental unit, the floor being 100% rotted, all the black mold and the non-functioning toilet, the Tenant would need to make arrangements for accommodation from December 18 to 23, 2021 so that she could vacate the rental unit to allow the contractors could do the work. The Tenant stated the repair work was never done.

MY stated that, after the Landlord received the Repair Letter, the Landlord inadvertently gave the Tenant the wrong 4 Month Notice. MY stated that she believed the problems with the rental unit are the result of the Tenant's lack of cleanliness. The Landlord stated that it was not until after the second time that she and the contactors went into the rental unit and noticed the amount of mold that was present. The Landlord stated that they did not see the mold during the first inspection due to all of the stuff the Tenant had in the rental unit. The Landlord stated the contractors then told her that, until the mold was remediated, they were not in a position to perform the work that was required. The Landlord stated she then contacted several mold remediation specialists and was told by them that they were not taking new clients at that time. The Landlord stated she did not know what to do at that point and told the Tenant that she could not find anyone to remediate the mold in the rental unit.

The Tenant stated she is not a hoarder and that she does not live in unclean conditions. The Tenant stated she had removed the cleaning supplies and medical equipment from the bathroom before the contractors came for the first inspection of the rental unit and denied there was stuff in the bathroom during that inspection. The Tenant stated the mold was clearly visible in the bathroom and kitchen as revealed by the photos she entered into evidence. The Landlord denied the items were removed from the bathroom for the first inspection and stated they were removed prior to the second inspection.

Analysis

The parties provided conflicting testimony regarding the circumstances that led to the Landlord serving the 2 Month Notice on the Tenant. Where a tenant disputes a notice to end tenancy, the landlord has the initial burden to demonstrate, on a balance of probabilities, that there is cause to end the tenancy pursuant to the notice.

Section 32(1) of the Act states:

> 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Pursuant to section 32(1), a landlord is required to maintain and repair a rental unit. When repairs are required, a landlord must fulfil their obligation by performing the repairs when requested by a tenant in a reasonable period of time. A landlord may not avoid completing repairs to a rental unit by seeking to end the tenancy by giving the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property. Sections 49(1), 49(2), 49(3), subsection 49(6)(f) and section 49(8) of the Act state in part:

> 49(1) In this section:
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> […]
>
> "landlord" means
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> (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, and
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> (b) for the purposes of subsection (4), a family corporation that
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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;
>
> […]
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> (2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy
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> (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
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> (i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[…]

(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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

[…]

(f) *convert the rental unit to a non-residential use.*

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(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, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The 2 Month Notice was served on the Tenant in-person on July 2, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or by July 18, 2022, being the next business day after the expiry of the 15-day dispute period. The records of the RTB disclose the Tenant filed the Application to dispute the 2 Month Notice on July 11, 2022. As such, I find the Tenant filed the Application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

Residential Tenancy Policy Guideline# 2A (“PG 2A”) addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

> In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.
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> *"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 and MHPTA or the tenancy agreement.*

MY stated the Landlord’s son and his girlfriend intend to move into the rental unit after the effective date of the 2 Month Notice. The Landlord stated her son is currently residing with her in an unfinished basement. The Landlord stated the rental unit is located in a small town and that it would be obvious to people if her son and his girlfriend did not move into the rental unit.

The Tenant stated NB served the Landlord with the Repair Letter on November 29, 2021 that listed extensive repairs that required to be performed by the Landlord on the rental unit. The Landlord admitted receiving the Repair Letter and that the only repair she completed from the list enumerated in the Repair Letter was replacing the hot water tank. The parties agreed that a contractor performed two inspections of the rental unit in November 2021. The Landlord stated that, after the second inspection, she was told by the contractor that it would be necessary for the rental unit to be remediated to remove the black mold before they could perform repairs. The Landlord stated she was unable to locate a specialist to do the remediation work. The Landlord served the 4 Month Notice on the Tenant that was subsequently cancelled as she had used the wrong form. The Landlord then served the First 2 Month Notice on the Tenant that was cancelled by the arbitrator who heard the application for dispute resolution that was made by the Tenant.

As stated by the Court n *Gichuru v Palmar Properties Ltd*, good faith means a landlord is acting honestly and it does not mean they have an ulterior motive for ending the tenancy and they are not trying to avoid obligations under the Act or tenancy agreement. Although the Landlord may have the honest intention for her son and his girlfriend to move into the rental unit as the primary purpose for giving the 2 Month Notice, the Landlord failed to comply with her obligations to complete repairs to the rental unit as required by section 33(1) of the Act before she served the 2 Month Notice on the Tenant. As noted above, a landlord may not avoid their obligations to perform repairs and maintenance by serving a Two Month Notice on the tenant. Where the repairs are extensive and require the Tenant to vacate the rental unit, then the Landlord has the option of following the procedures of the RTB to seek approval to serve the Tenant with a Four Month Notice to End Tenancy for Repairs.

Based on the foregoing, I find the Landlord has not satisfied, on a balance of probabilities, that she was acting in good faith when she served the 2 Month Notice on the Tenant. As such, I find the 2 Month Notice was not issued for a valid reason. I order the 2 Month Notice to be cancelled. This tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.

I dismiss the Tenant's Other Claims with leave to reapply. The Tenant has the option of making a new application for dispute resolution to make the Other Claims.

Conclusion

The 2 Month Notice is cancelled. This tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.

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: December 14, 2022

Residential Tenancy Branch