Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OPL, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on July 20, 2022 the Tenants' Dispute Resolution Package was personally served to the Landlord. The Landlord acknowledged that these documents were personally served to him. I therefore find that they were served in accordance with section 89(1)(a) of the *Residential Tenancy Act (Act*).

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution.

The Assistant with the initials "UM" stated that on August 09, 2022 the Dispute Resolution Package was personally served to the Tenant with the initials "NB". "NB" agreed that the documents were personally served to her, although she cannot recall the date of service. I therefore find that these documents were served to "NB" in accordance with section 89(1)(a) of the *Act*.

"UM" stated that the Dispute Resolution Package was also served to each Tenant, via email, on August 09, 2022. "NB" stated that she also received these documents, by email, on August 24, 2022. When asked if she showed those documents to the Tenant

with the initials “CB”, she stated that she understood he had also received them via email.

When “CB” was asked if he received the Landlord’s Dispute Resolution Package, he initially stated that he did not receive it. He subsequently stated that he did not recall if he received those documents by email.

On the basis of the testimony of “UM” and “NB”, I find, on the balance of probabilities, that “CB” received the Landlord’s Application for Dispute Resolution by email. I therefore find that he has been sufficiently served with those documents, pursuant to section 71(2)(c) of the *Act*. I find the testimony of “UM and “NB” is more compelling than “CB”’s testimony that he simply does not recall.

Even if “CB” did not receive the Landlord’s Application for Dispute Resolution, I find that “CB” is not disadvantaged during these proceedings, as the issues in dispute in the Landlord’s Application for Dispute Resolution are identical to the issues in dispute in the Tenants’ Application for Dispute Resolution.

On July 26, 2022 the Tenant submitted evidence to the Residential Tenancy Branch, in support of the Tenants’ Application for Dispute Resolution. “CB” stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

On August 04, 2022 the Landlord submitted evidence to the Residential Tenancy Branch, in support of the Landlord’s Application for Dispute Resolution. “UM” stated that this evidence was not served to the Tenants. As the evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

On December 01, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. This evidence was submitted in response to the Tenants’ Application for Dispute Resolution AND in support of the Landlord’s Application for Dispute Resolution. “UM” stated that this evidence was served to the Tenants, via email, on December 03, 2022 and, in person, on December 04, 2022. “NB” stated that she received this evidence by email.

“CB” initially stated that he did not receive the evidence package of December 01, 2022. He subsequently stated that he received it via email.

On the basis of the testimony of all parties, I find that the evidence package of December 01, 2022 was received by both Tenants, via email. As the Tenants acknowledge receiving this evidence, I find it has been sufficiently served to them pursuant to section 71(2)(c) of the *Act*.

On the basis of the undisputed evidence, I find that the evidence package of December 01, 2022 was emailed to the Tenants on December 01, 2022. That evidence is, therefore, deemed received by both Tenants, pursuant to section 90 of the *Act*, on December 04, 2022.

As the evidence package of December 01, 2022 is deemed received by the Tenants on December 04, 2022, I find that it was served in accordance with the timeline establish by the Residential Tenancy Branch Rules of Procedure. Residential Tenancy Branch Rule 3.15 requires a Respondent to serve evidence no later than 7 days prior to the hearing. As the Landlord served this evidence in response to the Tenants' Application for Dispute Resolution, the Landlord was required to serve it no later than December 08, 2022.

As the evidence package of December 01, 2022 was properly served, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Landlord be granted an Order of Possession or should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on April 05, 2020 and that rent is due by the first day of each month.

"UM" stated that on July 14, 2022 "NB" was personally served with the Two Month Notice to End Tenancy for Landlord's Use. "CB" stated that this document was personally served to him on July 14, 2022.

As a copy of the Two Month Notice to End Tenancy for Landlord's Use was not accepted as evidence for these proceedings, I am prevented from physically viewing the Notice. The Landlord and the Tenants both acknowledged that they had access to that document during the hearing. The parties were asked to view the document and they agreed that:

- the document served on July 14, 2022 is a RTB – 32, which is the Two Month Notice to End Tenancy for Landlord's Use generated by the Residential Tenancy Branch;
- the Two Month Notice to End Tenancy for Landlord's Use properly identifies the parties and the address of the rental unit;
- the Two Month Notice to End Tenancy for Landlord's Use is signed by the Landlord; and
- the Two Month Notice to End Tenancy for Landlord's Use declares the unit must be vacated by September 30, 2022.

"UM" stated that the reason for ending the tenancy cited on the second page of the Two Month Notice to End Tenancy for Landlord's Use is that it will be occupied by the Landlord or a close family member of the Landlord. He said that specifically, it declares that the unit will be occupied by the Landlord and/or the Landlord's spouse.

"CB" stated that the reason for ending the tenancy cited on the second page of the Two Month Notice to End Tenancy for Landlord's Use is that it will be occupied by the Landlord or a close family member of the Landlord. He said that specifically, it declares that the unit will be occupied by the Landlord and the Landlord's spouse and a child of the Landlord or Landlord's spouse.

The Landlord and the Tenant agree that there are two bedrooms in the rental unit, which is below the home where the Landlord is currently living with his son. The parties

agree that the living space above the rental unit is significantly larger than the rental unit.

The Landlord submits that:

- the Landlord was previously living in the upper portion of the home with his wife and three children;
- his wife and two of the children have moved to a different province;
- he and his son intend to move into the rental unit, in an effort to save money;
- the Landlord will rent out the upper portion of the residential complex;
- they attempted to sell the residential complex in September of 2020 in an effort to reduce their debt load;
- they have been unable to sell the complex;
- the residential complex is no longer for sale; and
- they will attempt to sell the residential complex in the future when the real estate market improves.

“CB” stated that the Tenants filed their Application for Dispute Resolution because:

- they have had trouble finding alternate accommodations;
- rents have “skyrocketed”;
- when the Two Month Notice to End Tenancy for Landlord's Use was served to him, the Landlord told him the upper portion of the house was too big;
- the Landlord subsequently told the Tenant that he could not afford to live in the upper portion of the house;
- he and his mother believe that the Landlord will increase the rent and re-rent the unit to someone else;
- the Landlord owns other properties; and
- the Landlord has “lots of money”.

In response to the submission that the Landlord is wealthy, “UM” stated that the Landlord is carrying a debt load of almost $800,000.00 and that the Landlord’s sister-in-law was assisting with finances. “UM” stated that interest rates have significantly increased their monthly mortgage payments. He stated that on June 30, 2022 their mortgage payment was $2,500.000 and that by October 31, 2022 it had increased to almost $4,000.00.

The Landlord submitted bank records in evidence. “UM” stated that the documents were submitted to show the increased mortgage payments referenced above. When asked if the Tenants have a comment about those documents, “CB” replied that he did

not. Although I was unable to clearly read the bank records, they appear to corroborate "UM"'s testimony.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act*) permits a landlord who is an individual to 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.

Regardless of whether the Two Month Notice to End Tenancy for Landlord's Use was personally served to "CB", as "CB" submits, or it was personally served to "NB", as "UM" submits, I am satisfied that it was served to one of the Tenants on July 14, 2022. I therefore find that the Tenants were served with notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*.

Regardless of whether the Two Month Notice to End Tenancy for Landlord's Use specifically declares that the unit will be occupied by the Landlord and/or the Landlord's spouse, as "UM" submits, or it specifically declares that the unit will be occupied by the Landlord and/or the Landlord's spouse and a child of the Landlord or Landlord's spouse, as "CB" submits, I am satisfied that the Tenants were informed that the tenancy was ending because the unit would be occupied by the Landlord or a close family member of the Landlord.

On the basis of the undisputed testimony of the parties, I find that the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*.

I find that the Landlord's submission that he intends to move into the rental unit with his son was credible and forthright. In the absence of any evidence to show that the Two Month Notice to End Tenancy for Landlord's Use was not served in "good faith", I find that the Landlord has the right to end this tenancy pursuant to section 49(3) of the *Act*. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

I find the Landlord's submission that he and his son intend to move into the lower two bedroom suite is reasonable and credible, given that the Landlord's wife and other two children are no longer living in the significantly larger upper suite that was previously occupied by the Landlord.

I find the Landlord's submission that he and his son intend to move into the lower two bedroom suite is supported by the "CB"'s testimony who stated that when the Two Month Notice to End Tenancy for Landlord's Use was served to him, the Landlord told him the upper portion of the house was too big and that the Landlord subsequently told him he could not afford to live in the upper portion of the house.

I have placed little weight on the Tenants' submission that the Landlord is wealthy. Even if the Landlord is wealthy, "UM"s testimony and the documentary evidence show that the Landlord is carrying a debt load of almost $800,000.00 and that their mortgage payment was $2,500.000 and that by October 31, 2022 it had increased to almost $4,000.00. I therefore find it reasonable and credible that the Landlord would want to increase the revenue generated by this residential complex by renting out the larger portion which is currently occupied by the Landlord.

In adjudicating this matter, I have placed no weight on the Tenants' submission that they have had trouble finding alternate accommodations. While I sympathize with renters in this difficult market, this submission does not prevent a landlord from ending a tenancy, pursuant to section 49 of the *Act*, if they intend, in good faith, to occupy the unit.

In adjudicating this matter, I have placed no weight on "CB"'s testimony that he and his mother believe that the Landlord will increase the rent and re-rent the unit to someone else, as there is simply no evidence to support this submission.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing their Application for Dispute Resolution.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee for filing their Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at **1:00 p.m. on December 31, 2022**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of $100.00 in compensation for the filing fee paid to file an Application for Dispute Resolution and I grant the Landlord a monetary Order for the $100.00. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Landlord does not wish to enforce the monetary Order Province of British Columbia Small Claims Court, the Landlord has the right to retain $100.00 from the Tenant's security deposit, pursuant to section 72(2) 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 18, 2022

Residential Tenancy Branch