Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

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;
- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the landlord's wife ("N.S."), the landlord's daughter ("N.V."), the tenant and the tenant's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

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 and order.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the tenant's application to dispute a rent increase to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice.

The tenant's other claim is unrelated in that the basis for it largely rests on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss the tenant's application to dispute a rent increase, with leave to reapply.

Section 55(1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession.

Preliminary Issue- Amendment

The tenant's application for dispute resolution lists the prefix "(It's a garden suite)" in front of the address of the subject rental property. I find that the word's "it's a" to be a descriptor of the type of suite and not actually part of the address. Pursuant to section 64 of the *Act,* I amend the tenant's application to remove the words "it's a" from the address of the subject rental property.

Issues 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*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, 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 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 agree that the subject rental property is a garden suite attached to the house in which the landlord and his family reside. The units are both on the same floor and are separated by an interior door, and the tenant has a private entrance.

N.S. and N.V. spoke on behalf of A.V. N.S. testified that she and the landlord purchased the subject rental property in October of 2021 and the tenant was residing in the subject rental property at that time. This evidence was not disputed by the tenant. The tenant testified that he moved into the subject rental popery on November 1, 2017.

N.S. testified that when they purchased the subject rental property the tenant told them that he was looking to purchase his own property and would be moving out when that occurred. N.S. testified that she and the landlord wanted the tenant's space for their own use but since the tenant already planned on moving out, they did not immediately serve the tenant with a notice to end tenancy.

Both parties agree that in June of 2022 the landlord gave the tenant verbal notice to end the tenancy after the landlord became aware that the tenant purchased a property. Both parties agree that the tenant then asked the landlord to provide proper written notice.

N.S. testified that the landlord personally served the tenant with the Notice on July 17, 2022. The tenant agreed that he received the Notice in person on July 17, 2022. The tenant filed to dispute the Notice on July 19, 2022.

The Notice was entered into evidence, is signed by the landlord, is dated July 17, 2022, states that the effect date of the notice is September 30, 2022, is in the approved form, #RTB-32, and states the following grounds for ending the tenancy:

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).

Please indicate which close family member will occupy the unit:
The landlord or landlord's spouse

The tenant address on the Notice does not include the prefix "garden suite". In the hearing both parties agreed that the prefix garden suite is used to differentiate the address of the tenant from that of the landlord. The Notice does not state the address that the tenant is required to move out of.

N.V. testified that their side of the home has three bedrooms and that four people currently live there, including her parents, her sister and herself. N.V. testified that their family needs the extra space to live and use for their own recreation.

N.S. testified that they need the subject rental property for additional recreation space as their parents are moving in with them for six months or more. The landlord entered into evidence an electronic ticket passenger itinerary receipt for the landlord's parents which states that the landlord's parents will arrive on December 13, 2022 and will depart on June 3, 2023. N.V. testified that there is a lot going on in their home country right now and her grandparents stay may get extended.

The agent submitted that it would not be difficult to forge a plane ticket and requested the landlord provide a notarized copy of the plane ticket. N.V. testified that the landlord would be happy to provide additional evidence regarding the veracity of the ticket in evidence.

N.S. testified that her brothers are also in the process of getting their visas any may also come to reside in the subject rental property in the future. N.S. testified that they are not sure if N.V. or the parents will use the bedroom, but the landlord and the entire family will use the living room of the subject rental property for additional recreation space.

The agent testified that a brother is not a close family member, and the tenant cannot be evicted for the landlord's brother's use of the subject rental property.

The agent testified that the tenant applied to cancel the Notice because his situation makes it difficult to find a new place to live and because he believed he would stay at the subject rent property for the foreseeable future.

The agent testified that the tenant does not believe that the Notice is legal because the landlord approached the tenant in early June 2022, after they found out that the tenant purchased a property and asked the tenant verbally to move out before the summer so that they could air bnb the subject rental property during the busy season.

The agent testified that original tenancy agreement with the previous landlord was a one year fixed term tenancy agreement from November 1, 2017 to October 31, 2018 which rolled into a month to month tenancy agreement.

The agent testified that tenant and the landlord agreed verbally to enter into a new written tenancy agreement for a specific term, but the landlord failed to draft the new tenancy agreement. N.S. testified that the landlord never agreed to enter into a fixed term tenancy agreement because they wanted to use the subject rental property for their own use.

N.V. and N.S. testified that the landlord never planned on using the subject rental property for air bnb and never told the tenant that he had to move out so that the landlord could air bnb the subject rental property.

Analysis

Based on the testimony of both parties, I find that the tenant was personally served with the Notice on July 17, 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 landlord and the tenant's units are separate and distinct and that the subject rental property is the garden suite

attached to the landlord's house. Pursuant to section 68(1) of the *Act,* I amend the Notice to add the prefix "garden suite" to the tenant's address. I also find that while the Notice does not state the unit the tenant is required to vacate, the tenant was aware of his address and was aware that the landlord was seeking him to vacate the subject rental property. I also note that the amended notice provided the tenant's address earlier in the Notice. Pursuant to section 68 of the *Act,* I amend the Notice to state the address of the subject rental property as the address the tenant must vacate by September 30, 2022.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit.

Section 49(1) of the *Act* defines a close family member as: (a)the individual's parent, spouse or child, or (b)the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline #2A (PG #2A) explains the 'good faith' requirement 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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. 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 (section 32(1)).
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> ….
>
> The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

PG #2A further provides:

> **Reclaiming a rental unit as living space**
> If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room….

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for additional living and recreation space. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence presented in this hearing.

I find that it is reasonable that a family of four, who currently reside in a three bedroom unit, may want additional recreation space and that this space may be all the more desired because the family frequently has extended family staying with them for long periods of time.

While the tenant did not accept the veracity of the airplane ticket, I find that this submission does not appear to be based on any particular concern and has little to no merit. Based on the plane ticket I accept that the landlord's parents are planning on staying with the landlord from December 13, 2022 to June 3, 2023 and that there is a reasonable probability that their stay may be extended.

I find that the tenant's claims pertaining to the landlord renting the subject rental property on air bnb to be unmeritorious and unsupported.

I find that as the landlord is using the subject rental property for additional recreation space, the potential of the landlord's brother's visiting and possibly staying with the landlord sometime in the future is not relevant because the Notice was not issued so that the landlord's brother could reside in the unit. I note that the landlord must use the subject rental property for recreation for at least six months after the tenant vacates the subject rental property.

I find the landlord's testimony regarding their intention to use the unit once the tenant purchased his own property to be credible and is supported by the agent's testimony that the tenant was asked to move out once he purchased his own property. I find that in issuing the Notice, the landlords were acting in good faith and honestly intend to use the subject rental property for additional recreation space and that the landlord's daughter or parents may also use the bedroom. I find that the above scenario meets the requirements to end a tenancy under section 49(3) of the *Act.* I find that the landlord honestly intends to use the living space in the subject rental property as a second living space or recreation space. I therefore uphold the Notice and dismiss the tenant's application to cancel the Notice.

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.

Upon review of the amended Notice, I find that it meets the requirements of section 52 of the *Act.* Pursuant to section 55(1) of the *Act,* since the Notice was upheld, the tenant's application dismissed and the amended Notice complies with section 52 of the *Act,* I find that the landlord is entitled to a two-day Order of Possession.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Conclusion

The tenant's application to recover the filing fee and cancel the Notice is dismissed without leave to reapply.

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: December 12, 2022

Residential Tenancy Branch