Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On August 3, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlord's 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*.

Both Tenants and the Landlord attended the hearing. 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 Tenants advised that the Landlord was served with the Notice of Hearing package by registered mail on or around August 18, 2022, and the Landlord confirmed that he received this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing package.

Tenant K.W. then stated that she served their evidence to the Landlord on November 21, 2022, by placing it under the Landlord's doormat. The Landlord confirmed that he received this evidence on November 22, 2022, and he stated that this should not be considered because it was not served in a manner in accordance with the *Act*. The

Landlord was provided with an opportunity to explain how receiving the evidence in this manner was prejudicial to him; however, he could not provide any reason for how service in this manner adversely affected his ability to review or respond to the evidence. While this evidence was not served in a manner pursuant to Section 88 of the *Act*, as the Landlord received this in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenants by email on November 24 and 27, 2022. The Landlord was asked multiple times if the parties had consented to exchange documents by email, using a specific email address; however, he would continue to provide vague responses and would not answer the question directly. Given that the hearing was limited in time, he was cautioned that if he did not answer the question straightforwardly, his response would then simply be noted in the negative.

K.W. advised that she received this evidence on November 24 and 27, 2022; however, it was difficult to read some of the documents due to the quality of the scanning of the evidence. As well, both Tenants confirmed that the parties never consented to exchange documents by email.

Given that there was no prior consent by the parties to exchange documents by email, using a specific email address, and given that the entirety of this evidence was not legible to the Tenants, I am not satisfied that this evidence was sufficiently served to the Tenants. The Landlord had many other methods of serving evidence to the Tenants at his disposal, pursuant to Section 88 of the *Act*. As I am not satisfied of service of this documentary evidence, I have excluded this evidence and will not consider it when rendering this Decision.

All parties acknowledged the evidence submitted and 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 dismissed?
- 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, Evidence, and Analysis

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 most current tenancy agreement was signed on March 27, 2021, that it started on April 1, 2021, and that the tenancy was currently a month-to-month tenancy. The Landlord submitted that rent was presently established at an amount of $3,248.00 per month in accordance with a Notice of Rent Increase, effective for January 1, 2022. This was despite the tenancy agreement establishing rent at $3,200.00 per month. The parties did agree that rent was due on the first day of each month, however, and that a security deposit of $1,600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence, for consideration.

While there was the possibility of a rent increase being implemented in contravention of the *Act*, the parties were advised during the hearing that I would not make a Decision on this matter as it was not relevant to the issue at hand, which was the dispute of the Notice. However, for the parties' benefit, I have attached Section 42 of the *Act* below as information with respect to rent increases. [Emphasis added]

> ***42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:***

> ***(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;***
> *(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*
>
> *(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*
> *(3) A notice of a rent increase must be in the approved form.*
> ***(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.***

With respect to the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, all parties agreed that the Notice was posted to the Tenants' door and placed in the Tenants' mailbox on July 27, 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 checked off the box indicating that the rental unit will be occupied by "The child of the landlord or landlord's spouse." The effective end date of the tenancy was noted as September 30, 2022, on the Notice.

The Landlord advised that his daughter had been living either with him or his ex-wife for the past six years, and that she had completed her high school in Halifax. He stated that she mentioned in 2020 that she would like to attend one of three, specific post-secondary institutions in BC. As a result, he purchased the rental unit in April 2021 as it was in a convenient location from any of these institutions. He testified that in April 2022, he did not know which institution she would be accepted into, that she was accepted into a school in May 2022, and that she informed him of this sometime in June 2022.

However, he also provided contradictory testimony that his daughter had decided to move back to BC, and informed him of this, in or around "2020 to 2021". He referenced documentary evidence to support the position that she has been enrolled in this institution for the fall term from September 1, 2022 to December 31, 2022. As well, he cited documentary evidence of his daughter's tenancy agreement from September 1, 2022 to November 30, 2022, because she was unable to move into the rental unit.

Moreover, he stated that she was still currently living at this address.

He also testified that it his son was “hoping” to reside in the rental unit after ending his current employment, but this will not be done until the rental unit is secured. When he was questioned about providing any further details regarding the legitimacy of this plan, he stated that he “thinks his daughter would move in, then his son would move in later.” He also advised that there was no evidence to corroborate this plan as his son would not quit his job before knowing when there was a confirmed possession date.

He submitted that despite being informed of his daughter’s enrollment in June 2022, and of her alleged desire to move into the rental unit, and despite knowing that it was his son’s desire to move in as well, he had no reason to inform the Tenants of this plan at any point prior to service of the Notice.

Tenant E.C. advised that the institution’s semester started on September 2, 2022, and noted that the Landlord’s evidence demonstrates that his daughter’s enrollment was actually for September 8, 2022. She further questioned the legitimacy of the Landlord’s documentary evidence because the Landlord testified that his daughter was accepted into the institution in May 2022; however, there was no documentary evidence to support this. As well, many of the documents submitted indicated payments for the institution were made after the Notice was served, and subsequently disputed.

She testified that they experienced plumbing issues in the rental unit on or around July 14, 2022, and a demand letter was eventually issued to the Landlord on July 18, 2022, to have these problems rectified. While these plumbing issues were resolved on July 25, 2022, the Tenants were required to hire a qualified tradesperson to complete the repairs as the contractor that the Landlord had hired was not qualified to complete the work. Despite this, the Landlord did reimburse the Tenants for this cost. Given that the Notice was served mere days after this matter was resolved, it is the Tenants’ belief that this was retaliatory, and they are now hesitant to bring forward any other concerns that they have regarding necessary repairs to the rental unit.

In addition, she advised that the Landlord sent them an email on July 24, 2022, which was related to the repair of the plumbing issues where he responded by stating “in moving forward…” It is their position that if the Landlord truly intended to serve the Notice to have his daughter and son move in, it does not make sense why he would refer to how the relationship between the parties should continue into the future, and

this demonstrated that the Landlord had no prior intention to serve the Notice for Landlord's use, despite his claims.

K.W. advised that the rental unit was a three-level, four-bedroom house, and she questioned the legitimacy of the Landlord's daughter occupying such a large property by herself.

The Landlord confirmed that the rental unit is a four-bedroom house, and he testified that his daughter and son would occupy it.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a 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. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, 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.

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."

Moreover, 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 also 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 submissions before me, I have many issues with the plausibility of the Landlord's testimony, and this causes me to question the legitimacy of his assertions. For the sake of brevity however, the only ones that I will note in this Decision are related to his claims that the Notice was served because it was his intention to have his daughter move into the rental unit.

The Landlord testified that his daughter informed him in 2020 that she would like to attend an educational institution in BC, and that he specifically purchased the rental unit in April 2021 in anticipation of her possibly using it in the future when she was aware of which institution that she would attend. Furthermore, she allegedly advised him in June 2022 that she had been accepted into a nearby institution in May 2022, and he confirmed that he was aware that her school semester was to begin on September 1, 2022.

Given that this was his long-term plan, I find it curious why he did not serve the Notice in June 2022, when he was informed of this by his daughter, so that the effective end date of the tenancy would be August 31, 2022. This end date of the tenancy would then align with the start of his daughter's school semester. Instead, the Landlord oddly chose to wait to serve the Notice on July 27, 2022, pushing the effective end date of the tenancy to September 30, 2022. By doing so, the Landlord's daughter would have had to find alternate accommodations for September 2022 at any rate.

As the plan to have his daughter occupy the rental unit at some point for school was allegedly formulated at least a year prior to the tenancy starting, I find it extremely unlikely that the Landlord would have then waited an extra month to serve the Notice, additionally inconveniencing his daughter. In my view, when assessing the likelihood of

this scenario, I find that it makes little logical sense, and this causes me to doubt the reliability of the Landlord's testimony.
Moreover, I find it important to note that the Tenants testified that the Landlord emailed them on July 24, 2022, in response to their past plumbing dispute, and he stated "in moving forward…" in that email. As well, they submitted that the Landlord never once mentioned at any point in any discussions or documents that their tenancy would be ending because his daughter would be moving into the rental unit.

Firstly, as noted above, it does not make any rational sense why the Landlord would have waited a whole month after being informed that his daughter was accepted into a nearby school, to serve the Notice. Secondly, given that the Landlord allegedly knew in June 2022 that his daughter would be requiring the rental unit, there was no explanation provided by the Landlord for why he would not have informed the Tenants of this. I do not find it reasonable that if the Landlord knew in June 2022 that his daughter would be moving in, that he would reply in an email on July 24, 2022, about the tenancy "moving forward" with the Tenants, instead of informing them that his daughter would be moving in. I do not find these opposing actions to be consistent with common sense or ordinary human experience. With this inconsistent messaging, combined with the Notice being served three days after the email, I find that this further causes me to be increasingly skeptical of the legitimacy of the truthfulness of the Landlord's submissions.

In addition, when the Landlord was asked to elaborate on certain submissions during the hearing, there were many times that these questions were met with silence, which then required prompting. I note that at no time did the Landlord express any difficulty understanding any questions, nor were there any requests to reiterate those questions. Furthermore, there were many instances where the Landlord would provide vague responses, where it became increasingly obvious that he was not attempting to answer a specific question directly, but was attempting to mislead with his responses.

In conjunction with the doubts created by his questionable, inconsistent, and illogical testimony, I am satisfied that it was evident that the Landlord was attempting to manufacture answers that were not truthful, and was attempting to tailor a series of facts that would fit a particular narrative, in order to justify and meet the requirements for service of the Notice. I find that this was never more evident than when the Landlord was reminded of the consequences of 12 months' compensation, and that he acknowledged that he was simply required to use the property for six months, and then he could do whatever he wanted with it. In my view, it was clear that the Landlord discovered an avenue to attempt to end the tenancy, and that if successful, he would

then have used it for the minimum time required. This statement from the Landlord further reinforces a conclusion that there was no intention for his daughter and/or son to live there long-term, if at all.

I also find it important to note that the Landlord testified multiple times that he submitted "perfect evidence", which I found to be a particularly odd and bizarre manner to describe his documentary evidence. In my view, it is evident that the Landlord did not have any prior plan to serve the Notice, that he only did so after researching the *Act*, and that he then attempted to craft a narrative that would fit within the requirements of the *Act* in order to justify service of the Notice. I have no doubt that the Landlord had been fabricating an ever-changing narrative in an attempt to portray a scenario that it had been his intention to use the rental unit in good faith. Clearly this places his intention to use the rental unit in good faith into serious doubt. It is increasingly apparent that the Landlord's evidence was less than "perfect", but was curated in a manner to appear that way.

As I do not find the Landlord's testimony to be credible, reliable, compelling, or persuasive, I am doubtful that the Notice was served in good faith. I find it more likely than not that the Landlord's reasons above were created duplicitously to disguise an ulterior motive for serving the Notice.

Ultimately, based on the doubts raised, I am not satisfied that the Landlord has established any grounds to justify service of the Notice. Therefore, I find that the Notice of July 27, 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 in satisfaction of this claim.

Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property of July 27, 2022 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with 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 12, 2022

Residential Tenancy Branch