



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL OLC**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 18, 2022 ("2 Month Notice") pursuant to section 49; and
- an Order that the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62.

The Landlord, the Landlord's agent and translator ("XY") and the two Tenant 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*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and some of his evidence (collectively the "NDRP Package") to the Landlord by registered mail but he could not recall the date or provide the Canada Post receipt or tracking number for service on the Landlord. XY acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant stated he served additional evidence on the Landlord in-person but he could not recall the date of service. XY acknowledged the Landlord received the Tenants' additional evidence on December 23, 2022. I find the Tenant's additional evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

XY stated the Landlord served his evidence on the Tenant's door on December 22, 2022. The Tenant acknowledged he received the Landlord's evidence. I find the Landlord's evidence was served on the Tenant in accordance with section 88 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claim

At the outset of the Original Hearing, I observed the Application included a claim for an order that the Landlord comply with the Act, Regulations or tenancy agreement ("Tenant's Other Claim").

Rule 2.3 of the Rules states:

2.3 Related issues

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 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 the primary issues in the Application were whether the tenancy would continue or end based on the 2 Month Notice. Accordingly, I find the Tenant's Other Claim was not sufficiently related to the primary issues of whether the 2 Month Notice would be cancelled. Based on the above, I will dismiss the Tenant's Other Claim, with or without leave, depending upon whether I cancel the 2 Month Notice.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If the Tenant is not entitled to cancellation of 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.

XY submitted into evidence a copy of the tenancy agreement between the Landlord and Tenant. The parties agreed the tenancy commenced on December 1, 2018, or a fixed term ending December 31, 2019, with rent of \$1,300.00 payable on the 1st day of each month. The tenancy agreement provided the rent included parking for 2 vehicles and use of a garage. The Tenant was required to pay a security deposit of \$650.00. XY acknowledged the Landlord received the security deposit and that the Landlord was holding it in trust for the Tenant. XY stated the Tenant paid the rent for January 2023. Based on the testimony of the parties, I find there is a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 2 Month Notice. XY stated the Landlord served the 2 Month Notice on the Tenant's door on August 18 or 19, 2022. The Tenant acknowledged he received the 2 Month Notice on August 19, 2022. I find the 2 Month Notice was received by the Tenant on his door on August 19, 2022 in accordance with the provisions of section 88 of the Act. The 2 Month Notice stated the reason for ending the tenancy was the rental unit would be occupied by the child of the Landlord or the Landlord's spouse. The 2 Month Notice stated the move out date was October 31, 2022.

XY stated the closing of the purchase and sale of the residential property from the processor owner to the Landlord occurred on June 24, 2022. XY stated he was the child of the Landlord. XY stated that he and his fiancé want to move into the rental unit because he has been accepted into a professional program at the University of British Columbia ("UBC"). XY stated he applied to UBC Housing and was advised that his application for housing was wait listed. XY submitted into evidence a copy of an email dated July 13, 2022 ("Housing Email") to him from UBC Housing to corroborate his

testimony, being just over one month before the 2 Month Notice was served on the Tenant. XY stated alternative housing on UBC's campus is very expensive. XY stated that he is currently living in the upper suite of the residential property with the Landlord and his mother. XY stated both the Landlord and his mother have sleep issues. XY stated he is up early in the morning and up late at night. XY stated the upper suite has an open floor plan and, as a result, he disturbs his father's sleep. XY stated the Landlord has agreed that he and his fiancé may use the rental unit and the adjacent rental unit, both of which are located on the lower floor of the residential premises. XY stated that, in addition to wanting to avoid disturbing the Landlord and Tenant, he and his fiancé want to have their privacy. The Landlord stated he was acting in good faith when he served the 2 Month Notice on the Tenant on the basis that his son will be occupying the rental unit.

The Tenant stated the rental unit consists of a kitchen and a bedroom. The Tenant stated there is an adjoining basement rental unit ("Adjacent Unit") rented by another tenant. The Tenant stated the Adjacent Suite is comprised of a kitchen, living room and two bedrooms. The Tenant stated that the rental unit and the Adjacent Unit may be accessed through a shared laundry room that has a door on each side. The Tenant stated the previous landlord told him in June 2022 that the Landlord would continue the tenancies for his rental unit and the Adjacent Unit. The Tenant stated he was shocked when he received a text message to tell him he was being evicted pursuant to the 2 Month Notice. The Tenant stated that the tenant in the Adjacent Unit also received a Two Month Notice to End Tenancy from the Landlord. The Tenant stated there are four bedroom upstairs. The Tenant argued that there was no reason to end the tenancy on the basis there was sufficient room for the Tenant and his fiancé in the upstairs' suite.

The Tenant stated the previous landlord gave him permission to use a theater room and adjacent storage area. The Tenant stated XY requested that he remove his belongings from the theater room and adjacent storage area. The Tenant stated he complied with XY's request that he remove his belongings in the theatre room and adjacent storage areas. The Tenant stated XY entered the garage to which he has exclusive use under the tenancy agreement, and left items in it without the Tenant's permission. XY stated that, when the Tenant advised him that the garage was for the Tenant's exclusive use, he removed the items that he had placed in the garage. The Tenant stated he lost his internet connection after the Landlord moved in but it was resolved within about one week.

XY stated the rental unit is not large and that he plans to use it for study space and workspace for his tutoring of students. XY stated he and his fiancé will use the Adjacent Unit for cooking, living and sleeping space.

Analysis

The Tenant acknowledged receiving the 2 Month Notice on his door on August 19, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or September 5, 2022, being the next business day after expiry of the 15-day dispute period. The records of the Residential Tenancy Branch disclose the Tenant filed the Application to dispute the 2 Month Notice on August 27, 2022. I find the Tenant made the Application 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.

"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."

XY stated he is a child of the Landlord. XY stated that he and his fiancé intend to move into the rental unit because he has been accepted into a professional program at UBC. XY provided a copy of the Housing Email and stated he applied to UBC Housing and was advised that his application was wait listed. The Housing Email was sent just over one month before the 2 Month Notice was served on the Tenant. XY stated alternative housing on UBC's campus is very expensive. XY stated that he is currently living in the upper suite of the residential property with the Landlord and his mother. XY stated both

the Landlord and his mother have sleep issues. XY stated he is up early in the morning and up late at night. XY stated the upper suite has an open floor plan and, as a result, he disturbs his father's sleep. XY stated the Landlord has agreed that he and his fiancé may use the rental unit and the Adjacent Unit. XY stated that, in addition to wanting to avoid disturbing the Landlord and Tenant, he and his fiancé want privacy. XY stated the rental unit is not large and that he plans to use it for study space and workspace for his tutoring of students. XY stated he and his fiancé will use the Adjacent Unit for cooking, living and sleeping space. The Landlord stated he was acting in good faith when he stated in the 2 Month Notice that his child will be occupying the rental unit.

The parties agreed the rental unit consists of a kitchen and a bedroom and the Adjacent Unit is comprised of a kitchen, living room and two bedrooms. The Tenant stated that the rental unit and the Adjacent Unit may be accessed through a shared laundry room that has a door on each side. The parties agreed the Landlord also served the tenant of the Adjacent Unit with a Two Month Notice to End Tenancy. The Tenant stated there are four bedrooms upstairs. The Tenant argued that there was no reason to end the tenancy on the basis there was sufficient room for the Tenant and his fiancé in the upstairs' suite.

The Tenant stated the previous landlord gave him permission to use a theater room and adjacent storage area. The Tenant stated XY requested that he remove his belongings from the theater room and adjacent storage area. The Tenant stated he complied with XY's request that he remove his belongings in the theatre room and adjacent storage areas. The Tenant stated XY entered the garage to which he has exclusive use under the tenancy agreement, and left items in it without the Tenant's permission. The Tenant stated he lost his internet connection after the Landlord moved in but it was resolved within about one week. XY stated that, when the Tenant advised him that the garage was for the Tenant's exclusive use, he removed the items that he had placed in the garage. Although there was some misunderstanding by the Landlord as to the Tenant's right to use the storage space and the garage, I do not find that this led to the Landlord serving the Tenant with the 2 Month Notice. I also find that there was no failure on the part of the Landlord to repair and maintain the rental unit nor was there any testimony or evidence from the Tenant that would suggest the Landlord had attempted to obtain more rent from the Tenant.

I find XY intends to occupy the rental unit and Adjacent Unit. XY provided a reasonable explanation for why he and his fiancé want to occupy the rental unit rather than residing in the upper suite with the Landlord and his wife. I also find that XY provided a reasonable explanation for why the Landlord served a Two Month Notice to End Tenancy on the tenant of the Adjacent Unit so that XY would also have use of the Adjacent Unit. Based on the foregoing, I find the Landlord has provided sufficient testimony and evidence to establish grounds to end the tenancy pursuant to section 49(3) of the Act on the basis the Landlord intends in good faith to use the rental unit pursuant to section 49(3) of the Act. Based on the foregoing, I dismiss the Application.

I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 55 (1)** 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.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an Order of Possession. Section 52 of the Act states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the 2 Month Notice and find it complies with the form and content requirements of section 52. As such, pursuant to section 55(1), I grant the Landlord an Order of Possession effective at 1:00 pm on January 31, 2023.

Section 51(1) of the Act states:

- 51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Tenant has paid for the month of January 2022 but he has not received one-month free rent or, alternatively, compensation that is equivalent to one months' rent pursuant to section 51(1) of the Act. As such, I order the Landlord to pay the Tenant for one months' rent, being \$1,300.00.

As the tenancy is ending, the Tenant's Other Claim is unnecessary. As such, I dismiss, the Tenant's Other claim without leave to reapply.

Conclusion

The Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective at 1:00 pm on January 31, 2023. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order the Landlord to pay the Tenant \$1,300.00. This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial Court.

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: January 18, 2023

Residential Tenancy Branch