



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, DRI, OPL, OPN, FFL, FFT, OPR, OPN, MNRL, CNR, LRE

Introduction

This hearing was convened in response to repeated cross-applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (“ 1 Month Notice”), pursuant to section 47;
- cancellation of the landlords’ 2 Month Notice to End Tenancy for Landlord’s Use of Property (“ 2 Month Notice”), pursuant to section 49;
- a request to make a determination on a rent increase pursuant to section 41,
- an order suspending or restricting the landlords access to the unit or suite pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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.

Preliminary Issue #1 – Severing a Portion of the Tenants' Application

The following RTB *Rules* are applicable and state (my emphasis added):

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.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

Rules 2.3 and 6.2 of the RTB *Rules* allow me to sever issues that are not related to the tenants' main urgent application. There are 5 separate applications before me.

The parties were provided with a priority hearing date, due to the urgent nature of their application to cancel four separate notices to end tenancy. As this is the central and most important urgent issue to be dealt with at this hearing. I dismiss the tenants' other claims with leave to reapply. For absolute clarity, this decision addresses the notices to end tenancy, the landlords request for an order of possession and monetary order for unpaid rent and both parties request to recover the filing fee.

Preliminary Issue #2 – tenants' evidence

At the outset of the hearing, the landlord advised that she had not received any documentary evidence from the tenants. The tenants confirmed they had not provided the landlord with their documentary evidence, accordingly; the tenants documentary evidence is inadmissible and was not considered in making a decision.

Issue(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, is landlord entitled to an Order of Possession for landlords' use of property?

Should the landlords' 1 Month Notice be cancelled? If not, is landlord entitled to an Order of Possession for Cause?

Should the landlords 10 Day Notice to end Tenancy be cancelled? If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is either party entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of each party's claims and my findings are set out below.

The landlord gave the following testimony. The tenancy began about two years ago. Monthly rent in the current amount of \$1450.00 is payable on the first day of each month. A security deposit of \$675.00 was paid by the tenants and the landlords continue to retain this deposit in full. The tenants continue to reside in the rental unit.

The landlord testified that her father is going to be moving into the suite to assist her financially and to help care for her children as she is a single mother. The landlord testified that she issued two notices to end tenancy by text message in August as she was unsure about the process as this is the first time that she has been a landlord. The landlord also issued a notice to end tenancy for unpaid rent on August 30, 2022 for rent that was due on September 1, 2022. The landlord testified that she realized she had made some errors and issued a proper 2 month Notice to End Tenancy for Landlords Use of Property on October 1, 2022. A copy of the landlords' 2 Month Notice was provided for this hearing. The landlord issued the notice for the following reason.

- *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).*

The landlord stated the following on her application for the reason to end the tenancy and requests an order of possession.

"MY FATHER SUBA SINGH IS MOVING IN WITH ME TO SUPPORT ME MONETARILY AND ALSO TO ASSIST ME WITH MY CHILD CARE DUTIES. I AM A SINGLE MOTHER. THE TENANTS HAVE ALREADY DISPUTED MY NOTICE. I NEED AN URGENT HEARING AS I REQUIRE MY FATHER TO MOVE IN SOON AFTER NOVEMBER 30, 2022 TO ASSIST ME AND SUPPORT ME."

The tenants gave the following testimony. RKP testified that in March 2022 the landlord increased the rent by \$100.00 when it should have only been \$20.00. RKP testified that the rent went up from \$1350.00 to \$1450.00 but should have only been raised to \$1370.00. RKP testified that he was unaware of the limitations for a rent increase until August 2, 2022. RKP testified that when he sent a text message to the landlord advising the increase was "illegal", she responded a few hours later advising that she was giving him 30 days notice to move out. When he responded the following day that he needed 60 days, she agreed and notified him by text that she was giving him until September 30, 2022 to move out. RKP testified that on August 30, 2022 the landlord issued a notice to end tenancy for unpaid rent but the rent wasn't due until September 1, 2022.

RKP testified that the landlord finally issued a proper notice to end tenancy on October 1, 2022 but questions her intentions. NKP testified that the landlord has not acted in good faith and is attempting to end the tenancy without justification. NKP testified that the landlord advised them that she would be re-renting the suite. RKP testified that he

disputes that there is another person living in the home. RKP testified that they are willing to move on but only if given more time.

Analysis

Burden of Proof

As noted below, the landlord has the burden of proof, on a balance of probabilities, to prove the reason for issuing the 2 Month Notice to the tenants. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of the reason on the 2 Month Notice.

Findings

Subsection 49(3) of the *Act* sets out that landlords may end a tenancy in respect of a rental unit if the landlords or a close family member intends, in good faith, to occupy the rental unit.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section “B. Good Faith:”

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) 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: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

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. 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 (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

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.

I find that the landlords had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

As noted above, both parties were given an opportunity to call witnesses at this hearing. The landlord's father did not attend this hearing to provide testimony or evidence. The landlord did not provide a letter from the landlord's father, as evidence for this hearing. The landlord's father did not provide written or testimonial evidence that he intends to move into the rental unit in good faith, when he wants to move in, or why he wants to move into the tenants' specific rental unit. In addition, section 52 addresses how a landlord must end a tenancy.

Form and content of notice to end tenancy

- 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.

The 30 Day notice issued on August 2, 2022 by text message and the 60 Day notice issued on August 3, 2022 by text message are of no effect or force as it does not meet the above criteria. The landlord confirmed that all rent was paid on time for September 1, 2022., accordingly I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 30, 2022 was issued prematurely and is of no force or effect as the rent was paid on time.

Furthermore, the landlord provided a text message conversation that began on August 1, 2022 with the tenants. The tenants sent a message advising they were thinking of moving out and the landlord responded that she would post an advertisement and try to rent it. The tenant responded back that they might need a few months longer and the landlord agreed but stated that she was in the process of posting an ad and that's when the tenant then brought up the issue of the illegal rent increase, the landlord responded with the 30 day notice and wanted the tenants to move out by September 1, 2022 as the tenants mother would be moving in with them and she didn't want that to happen. The landlord's documentation raises more questions than it answers.

As noted above, it is the landlords' burden of proof to show that the landlord's father intends to move into the rental unit in good faith, as this was reason, they said they issued the 2 Month Notice to the tenants.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their burden of proof to show that her father intends to move into the rental unit in good faith.

Accordingly, the tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated October 1, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlords' use of property. For absolute clarity, all notices to end tenancy in these applications are cancelled and are of no effect or force.

As neither party was fully successful in their application, they must each bear the cost of the filing fee.

Conclusion

The tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated October 1, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlords' use of property. The remainder of the tenants' application is dismissed with leave to reapply.

All the landlords' applications are dismissed in their entirety without leave to reapply.

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 05, 2023

Residential Tenancy Branch