



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNL, LRE, OLC, FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution made by the Tenant on November 21, 2022, pursuant to the Residential Tenancy Act (the Act). The Tenant applied for the following relief:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 7, 2022 (the Two Month Notice);
- an order suspending or setting conditions on the Landlords' right to enter the rental unit;
- an order that the Landlords comply with the Act, Residential Tenancy Regulation (the Regulations), and/or the tenancy agreement; and
- an order granting recover of the filing fee.

The Tenant attended the hearing and was represented by TH, legal counsel. The Landlords attended the hearing on their own behalf. The Tenant and the Landlords provided affirmed testimony.

On behalf of the Tenant, TH advised that the Landlords were served with the Notice of Dispute Resolution Proceeding package by email on November 30, 2022. TH also stated that an additional evidence package was served on the Landlords by email on January 10, 2023. The Landlords acknowledged receipt of these documents.

The Landlords testified the evidence upon which they intend to rely was served on the Tenant by email on January 13, 2023. The Tenant acknowledged receipt of these documents.

Although the Landlords raised an issue about the timing of service of the Tenant's evidence, the parties acknowledged receipt of their respective evidence packages. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue is whether the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply for the remainder of the relief sought at a later date as appropriate.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on June 1, 2020. Rent of \$1,632.00 per month is due on or before the first day of each month. The Tenant also pays an additional \$50.00 per month to rent a pasture. The Tenant paid a security deposit of \$800.00, which the Landlords hold. A copy of an unsigned tenancy agreement was submitted into evidence.

The Landlord testified the Two Month Notice was served on the Tenant by email on November 7, 2022. The Tenant's application confirms receipt of the Two Month Notice on November 7, 2022, and TH confirmed during the hearing that it was received by the Tenant on that date.

The Two Month Notice was issued on the basis that the rental unit will be occupied by the Landlords. DT testified that the Landlords' current residence and the rental unit are on the same property. DT testified that they moved from the rental unit into a commercial space when the Tenant moved into the rental property. The Landlords intended to renovate the commercial space. However, DT testified that a number of unanticipated issues arose. Specifically, DT testified that an issue arose regarding insurance. Specifically, the Landlords have been under-insured. Although the Landlords made efforts to seek out alternate insurance, their applications were declined.

DT also testified that the scope and cost of the project increased unexpectedly. For example, the Landlords discovered through a contractor that the plumbing was highly likely to fail and needed to be replaced throughout the residence. DT testified that this would involve opening walls and breaking concrete. DT also testified that electrical upgrades are needed. DT testified this is more work than was initially anticipated and that the renovation cannot move forward. Although the Landlords would like to move into a renovated space in the future, they have no immediate plans to do so.

DT also referred to the Landlord's family circumstances as a reason for wishing to move into the rental unit. The Landlords have been sharing a bedroom with their daughter. As the Landlords daughter is getting older, this is no longer an ideal situation. In addition, DT testified that the building space is not ideal in that there are open walls, and exposed insulation and plumbing. Photographs showing the interior of the Landlords' residence, including the shared bedroom, and exposed insulation and wiring, were submitted into evidence.

On behalf of the Tenant, TH advised that the Tenant is a 64-year-old woman who lives alone in the rental unit. TH stated that the Tenant believes the Landlords are acting in bad faith. TH submitted that the Landlords want to evict the Tenant because they do not get along. TH also submitted that the timing of the Two Month Notice is suspicious. In a decision dated September 21, 2022, a One Month Notice to End Tenancy for Cause dated June 24, 2022 (the One Month Notice) was cancelled. In addition, TH submitted that the Landlords are trying to disrupt the Tenant in a "passive-aggressive manner" by, for example, placing construction material in a garden area, accusing the Tenant of knocking over some boards (October 24, 2022), walking through an area used by the Tenant (November 5, 2022), advising the Tenant that she could not have another dog on the rental property, placing an excessive (3) number of notices on the Tenant's door in October 2022. TH also stated that the Landlords revoked benefits by not allowing the

Tenant to store items in the pumphouse, stopping snow removal, and increasing rent. TH submitted that taken together, these examples demonstrate the Landlords are acting in bad faith.

The Tenant testified that the Landlords were already living in the commercial space and were renting the rental unit as a vacation rental before the Tenant moved in. The Tenant also claimed that photographs submitted by the Landlord do not disclose the full picture regarding the Landlords' residence. Specifically, the Tenant testified there is a beautifully renovated suite on the second level which could be occupied by the Landlords.

The Tenant also testified that the way she has been treated is "horrifying." The Landlords constant coming and going escalated after the previous decision dated September 21, 2022. The Tenant testified that on one occasion, after saying hello to the Landlords' daughter, she was told not to engage with her. The Tenant also testified the Landlords blocked a common area.

The Landlords indicated their surprise at the Tenant's testimony and testified that it is not accurate. They stated they intend to occupy the rental unit for the reasons described in their evidence.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49(3) of the Act permits a landlord 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. When a tenant claims a landlord has not acted in good faith, the burden of proof rests with the Landlord on a balance of probabilities.

Policy Guideline #2A describes 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 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)).

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 demonstrate 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.

In this case, I find the Two Month Notice was served on and received by the Tenant on November 7, 2022. I also find the Tenant disputed the Two Month Notice on time on November 21, 2022, in accordance with section 49(8) of the Act.

The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlords. In this case, I accept that the Landlords' residence is no longer adequate to meet their family's needs. I also accept that the renovation has halted due to issues with insurance, cost, and scope. As a result, I accept that the Landlords intend to occupy the rental unit.

I also find there is sufficient evidence before me to conclude the Landlords issued the Two Month Notice in good faith. I find it is more likely than not that the Landlords have acted honestly and intend to move into the rental unit for the reasons described in their testimony. There was no suggestion that the Landlords intend to re-rent the Tenant's unit at a higher rate, and I do not accept that the examples of behaviours described by TH and the Tenant are sufficient to conclude the Landlords have not acted in good faith.

In addition, when a landlord issues multiple notices to end tenancy in succession, an arbitrator may find that a landlord has not acted in good faith, depending on the circumstances. However, in this case, the One Month Notice referred to in the decision dated September 21, 2022, was issued on June 24, 2022. In this case, the Two Month Notice was issued on November 7, 2022, more than four months later. I find the period between these notices being issued, and the issues addressed in the notices, are sufficiently distinct and do not give rise to a finding that the Landlord was not acting in good faith.

Considering the above, I find there is sufficient evidence to uphold the Two Month Notice. Therefore, the Tenant's requests for orders cancelling the Two Month Notice and to recover the filing fee are dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the Act. The Two Month Notice is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. Accordingly, I grant the Landlord an order of possession, which will be effective on May 31, 2023, at 1:00 p.m., in accordance with the effective date provided on the Two Month Notice. The rights and obligations of the parties under the tenancy agreement and the Act will continue until the tenancy ends in accordance with this order or otherwise in accordance with the Act.

Conclusion

The Tenant's requests for orders cancelling the Two Month Notice and to recover the filing fee are dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession, which will be effective on May 31, 2023, at 1:00 p.m. The order of possession may be filed in 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: January 25, 2023

Residential Tenancy Branch