



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL-4M, LRE

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a Four Month Notice to End Tenancy and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

The Tenant stated that on December 08, 2022 the Dispute Resolution Package and documents submitted to the Residential Tenancy Branch on December 08, 2022 were sent to the Landlords, via registered mail. The Landlord acknowledged receiving these documents on January 09, 2023 and the evidence was accepted as evidence for these proceedings.

On January 29, 2023, January 31, 2023, and February 02, 2023, the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant, on January 29, 2023. The Tenant acknowledged receiving this evidence on January 31, 2023 and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Four Month Notice to End Tenancy be set aside?

Is there a need to issue an Order suspending or setting conditions on the Landlords' right to enter the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on 2017; that rent is due by the first day of each month; and that the Tenant is still living in the rental unit.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Four Month Notice to End Tenancy on October 31, 2022 which declared that the Tenant must vacate the rental unit by February 28, 2023. The parties agree that the Notice to End Tenancy declares that the unit will be converted to a non-residential use, although in the details section of the Notice the Landlord has identified various kitchen and bathroom renovations that are planned.

The Landlord stated that the Four Month Notice to End Tenancy was served to the Tenant because the Landlord's daughter intends to use the living room of the rental unit as a business office. He stated that:

- He lives in the upper portion of the residential complex;
- The renovations noted on the Four Month Notice to End Tenancy are renovations that are planned for the upper portion of the complex;
- When the family is unable to use the kitchen and bathroom in their home, they will temporarily use the kitchen and bathroom in the rental unit;
- He expects the renovations will take approximately 2 or 3 months; and
- Once the renovations are complete his daughter will continue using the living room as her office.

The Tenant stated that he is willing to allow the Landlords to use his bathroom and kitchen while their home is being renovated.

The individual assisting the Landlord, who is the Landlord's daughter, stated that:

- She currently lives in the upper portion of this residential complex with her parents;
- She plans to continue living in the upper portion of the complex;
- She plans to use the lower living room as her office space, as she works from home; and
- She cannot work in the upper portion of the complex as she needs “complete quiet” to operate her counselling business.

The Tenant stated that the Landlord previously gave him verbal notice of his intent to end the tenancy because his daughter wished to use the rental unit as an office. The Landlord stated that he previously gave the Tenant written notice of his intent to end the tenancy because his daughter wished to use the rental unit as an office, but he did not pursue that Notice as the Tenant asked for more time.

The Tenant and the Landlord agree that the Landlord previously gave the Tenant a Two Month Notice to End Tenancy for Landlord's Use which declared that the Landlords intended to renovate the upper bathroom and kitchen but the Landlords withdrew that Notice and served him with this Four Month Notice to End Tenancy. The Landlord stated that he replaced the Two Month Notice to End Tenancy for Landlord's Use after the Tenant told him he had been served with the incorrect Notice and he realized his mistake.

The Tenant stated that the Landlord has attempted to increase the rent 4 or 5 times in the last three years. The Landlord stated that the rent was increased in 2019 and that there have been no attempts to increase the rent since that time. The Tenant submitted no evidence to corroborate his submission.

The Tenant is seeking an Order restricting or setting conditions on the Landlord's right to enter the rental unit.

The Tenant stated that:

- The Landlord and his family use the laundry facilities located in his rental unit;
- They have always had a verbal agreement that the Landlord could use the laundry facilities on Sundays, providing he is home;
- Since the tenancy began the Landlord/family enter his unit for the purposes of doing laundry without any notice;
- approximately one year ago he told the Landlord that he did not want him to use the laundry facilities on Thursdays;

- approximately 6 months ago he again told the Landlord that he did not want him to use the laundry facilities on Thursdays;
- the Landlord entered the unit and removed a table that had been given to him by the Landlord;
- he thinks the table was removed in February of 2022; and
- the Landlord told him that he would be taking the table, although he did not tell him when he would be entering the unit for that purpose.

The Landlord stated that:

- The Landlord and his family use the laundry facilities located in the rental unit;
- They have always had a verbal agreement that the Landlord could use the laundry facilities on Thursday and Sundays;
- The verbal agreement is that they can enter the unit without notice on those days for the purpose of doing laundry;
- He and his family have entered the unit on those days without notice, for the purpose of doing laundry, since the tenancy began;
- They do not use the laundry facilities every Thursday but they typically use it every Sunday;
- The Tenant leaves his door unlocked on Thursdays and Sundays to facilitate the Landlord's use of the laundry facilities;
- They never informed the Tenant prior to doing laundry on Thursdays and Sundays; and
- The Tenant never told him that he did not want him to use the laundry facilities on Thursdays.

The Tenant initially stated that the Landlord did not need to give notice prior to entering the unit on Sundays because they simply knew he was home. He subsequently stated that there was an agreement the Landlord would phone him on Saturdays before entering the unit on Sunday.

The Landlord's daughter stated that:

- The Tenant was borrowing a table owned by the Landlord;
- They had several discussions about the table being returned to the Landlord;
- The Tenant was told on several occasions that the Landlord was going to enter the unit to remove the table; and
- She cannot recall when the table was removed, although she thinks it was in 2021.

Analysis

Section 49(6)(f) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

On the basis of the undisputed evidence, I find that on October 31, 2022 a Four Month Notice to End Tenancy was served to the Tenant, which declared that the Tenant must vacate the rental unit by February 28, 2023. I find that this serves as proper notice of the Landlords' intent to end the tenancy pursuant to section 49(6)(f) of the *Act*.

On the basis of the undisputed testimony of the Landlord's daughter and in the absence of any evidence to the contrary, I find that the daughter intends to use the living room of the rental unit as her business office. I found her testimony to be forthright and credible, and I have no reason to discount it. I therefore find that the Landlords have established grounds to end this tenancy, pursuant to section 49(6)(f) of the *Act*, as a portion of the unit is being converted into a business office, which is a non-residential use.

On the basis of the undisputed evidence, I find that the Landlords intend to renovate the upper portion of the residential complex, which is their home. I find that they intend to temporarily use the bathroom and kitchen in the rental unit during the renovation, which is expected to take less than 3 months. As the Landlords will be occupying the bathroom and kitchen in the rental unit for less than 3 months, they do not have the right to end this tenancy pursuant to section 79(3) of the *Act*.

The Landlords do not have the right to end this tenancy pursuant to section 79(3) of the *Act*, because they do not intend to use the bathroom and kitchen for at least 6 months, which is a requirement established by section 51(2) of the *Act*.

While I accept that the Landlords will be using the bathroom and kitchen for a residential purpose for a few months, I find that the primary purpose of ending this tenancy is so that the living room can be used for a business office.

Although the Tenant's offer to allow the Landlords to use his bathroom and kitchen while their home is being renovated is admirable, the offer is not helpful in these circumstances, as the Landlord's daughter requires the use of the living room for her office.

In reaching this conclusion, no evidence was submitted that causes me to conclude that the Notice to End Tenancy was served in bad faith. Rather, the undisputed testimony that the Landlord previously gave the Tenant verbal notice of his intent to end the tenancy because his daughter wished to use the rental unit as an office, in my view, serves to corroborate the Landlords' submission that they currently wish to use the living room for a business purpose.

Although the parties agree that the Landlords previously gave the Tenant a Two Month Notice to End Tenancy for Landlord's Use which declared that the Landlords intended to renovate the unit, the undisputed evidence is that the Landlords withdrew that Notice and served him with this Four Month Notice to End Tenancy. On the basis of the undisputed testimony, I find that the Landlords withdrew the Two Month Notice to End Tenancy for Landlord's Use because they realized they could not end the tenancy on the basis of their plans to renovate the upper portion of the complex. I find that the Two Month Notice to End Tenancy for Landlord's Use was served because the Landlords did not clearly understand their rights. I do not find that it establishes that the Landlords changed their minds about why they were ending the tenancy or that they were attempting to mislead the Tenant or these proceedings. I therefore do not find that this is an indicator of bad faith.

I find that the Tenant has submitted no evidence to corroborate his testimony that the Landlords have attempted to increase the rent 4 or 5 times in the last three years or that refutes the Landlord's testimony that the rent was increased in 2019 and that there have been no attempts to increase the rent since that time. I therefore cannot conclude that the Landlord is ending the tenancy because the Landlord has been unable to increase the rent.

Although the evidence shows that the Landlord's daughter will not be using the entire rental unit as her business office, no evidence has been presented that suggests the remainder of the rental unit will be re-rented to a third party. I find it highly unlikely that the kitchen and the bathroom will be re-rented to a third party, as it seems highly unlikely that the daughter could operate a business office in those circumstances.

As the Landlords have establish grounds to end this tenancy pursuant to section 49(6)(f) of the *Act*, I dismiss the application to cancel the Four Month Notice to End Tenancy.

Section 55(1) of the *Act* stipulates 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 the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the Four Month Notice to End Tenancy complies with section 52 of the *Act* and I have dismissed the application to set aside the Four Month Notice to End Tenancy, I must grant the Landlords an Order of Possession. I therefore grant the Landlords an Order of Possession, pursuant to section 55(1) of the *Act*.

When one party wishes to rely on a term of a tenancy agreement, the party wishing to rely on that term bears the burden of proving the parties agreed to the term. When a term of a tenancy agreement is not made in writing, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to establish that the parties agreed to the term. As the Landlords assert there is a term that allows them to enter the rental unit without notice for the purposes of doing laundry, the Landlords bear the burden of providing there is such a term.

I find that the Landlords have submitted insufficient evidence to establish that they have the right to enter the unit, without notice, on Thursdays and Sundays, for the purpose of doing laundry. In reaching this conclusion I find there is insufficient evidence to corroborate the Landlords' submission that the Tenant agreed to this term or to refute the Tenant's submission that he did not agree to this term. I therefore cannot conclude that the Landlords have the right to enter the unit on those days, without prior notice.

On the basis of the testimony of the Tenant, I find that the Tenant agreed to allow the Landlords to enter the rental unit on Sundays for the purposes of doing laundry. Although the Tenant initially stated that the Landlords did not need to give notice prior to entering the unit on Sundays, providing they knew he was home, he subsequently stated that there was an agreement the Landlord would phone him on Saturdays before entering the unit on Sunday. On the basis of this testimony, I find that at the very least, the Landlords have the right to enter the rental unit on Sundays, providing they give the Tenant notice of their intent to end the tenancy sometime the previous day.

In an effort to provide stability to this tenancy for the remainder of this tenancy, I Order that the Landlords have the right to enter the rental unit on any Sunday, between 9:00 a.m. and 5:00 p.m. for the purpose of doing laundry. The Landlords do not need to

provide prior notice to the Tenant of their intent to do so, as this Order replaces any need for such notice.

I find that, for the remainder of the tenancy, the Landlords do not have the right to enter the rental unit at any other time for the purposes of doing laundry, even with written notice.

I further Order that, for the remainder of the tenancy, the Landlords must strictly comply with section 29(1) of the *Act* if they wish to enter the rental unit for any reason other than doing laundry.

Section 29(1) of the *Act* reads:

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Conclusion

The application for an Order suspending or setting conditions on the Landlords' right to enter the rental unit is granted.

The application to cancel the Four Month Notice to End Tenancy is dismissed.

I grant the Landlord an Order of Possession that is effective on **at 1:00 p.m. on February 28, 2023**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that 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: February 12, 2023

Residential Tenancy Branch