



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on October 2, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice);
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- To dispute a rent increase; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on February 7, 2023, and was attended by the Tenant, the Tenant's interpreter A.W., the Landlord, the Landlord's spouse J.C., the Landlord's interpreter V.L., and an agent for the Landlord B.L. (Agent). All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it

was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice, I find that the priority claim relates to validity/enforceability of the Two Month Notice and whether the tenancy will continue or end. As the other claims are not sufficiently related to whether the tenancy will continue or end, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the Act, regulations, or tenancy agreement, and
- The dispute of a rent increase.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the Two Month Notice and recovery of the filing fee. However, the parties were advised that all rent increases must be in accordance with the Act and regulations, and that even where a rent increase above the allowable amount is mutually agreed to in writing, a notice of rent increase on the Residential Tenancy Branch (Branch) form is still required, as well as the three-month notice period. Rent also may not be increased by a landlord within 12 months of the start of the tenancy or the date the last rent increase took affect.

Preliminary Matter #2

Although the Landlord and their spouse had an interpreter present with them, V.L., I had cause for concern that V.L. did not sufficiently understand English or the proceedings, given their repeated difficulty understanding my questions and instructions. However, the Agent and the Tenant's interpreter, as well as the Tenant, the Landlord, and the Landlord's spouse all spoke the same language. The Agent and the Tenant's interpreter therefore worked together to ensure the parties understood the proceedings and to interpret questions and testimony. As a result, I am satisfied that all parties were able to fully understand the proceedings and have a fair opportunity to participate.

Preliminary Matter #3

Although the Tenant acknowledged receipt of the documentary evidence before me from the Landlord, the Landlord denied receipt of any evidence from the Tenant specifically in relation to this Application/hearing, and the Tenant acknowledged that the documentary evidence before me relating to their claim for cancellation of the Two Month Notice was not served on the Landlord.

Although I provided the Tenant with the option to read the written submissions submitted into the record as they were not served on the Landlord, the Tenant could not locate them during the hearing and opted simply to summarize their arguments via memory at the hearing. I therefore excluded the documentary evidence before me from the Tenant from consideration and the hearing proceeded based on the testimony of the parties and the documentary evidence before me from the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72(1) of the Act?

Background and Evidence

The parties agreed that a verbal month-to-month (periodic) tenancy agreement exists between them and that the Tenant rents one of three dwelling units located in the single family residence. The parties agreed that the Tenant rents a one-bedroom unit on the main floor, that the Landlord and their spouse live upstairs in a three-bedroom unit, and that another two-bedroom rental unit is located on the main floor, which is occupied by tenants under a separate tenancy agreement.

The Landlord and their Agent stated that the Landlord's spouse J.C., who is 70 years old, has knee problems and difficulty with stairs. The Agent stated that J.C.'s condition, arthritis, continues to deteriorate and that J.C., the Landlord, and J.C.'s doctor's are concerned about J.C. continuing to reside upstairs given the number of stairs. The Agent stated that J.C. has already had several falls and as a result, cannot risk continuing to go up and down the 17 stairs leading from outside up to their current unit. Two doctor's notes were submitted in support of this testimony for my consideration. As a result, the Agent stated that the Two Month Notice was sent to the Tenant by registered mail on September 17, 2022, because the Landlord and their spouse plan to move into the rental unit. Tracking information stating that the registered mail was delivered on September 25, 2022, was also submitted.

The Two Month Notice in the documentary evidence before me is on the Branch form, is signed and dated September 17, 2022, has an effective date of November 30, 2022, and states that the tenancy is being ended because the Landlord or the Landlord's spouse intend in good faith to occupy the rental unit. The Tenant acknowledged receipt of the Two Month Notice on September 25, 2022, and filed the Application seeking its cancellation on October 2, 2022.

The Tenant argued that the Two Month Notice has not been served in good faith, and that the Landlord is simply trying to evict them as they disagreed with a verbal notice of rent increase a few days prior to the issuance of the Two Month Notice. The Tenant argued that the timing of the Two Month Notice is suspicious, and that it is more than mere coincidence that it was served after the Tenant took issue with the Landlord's attempt to improperly increase the rent. The Tenant stated that the Landlord advised them that they would rather leave the rental unit vacant for six months, than allow the Tenant and their spouse to continue residing there at the current rent amount. However, the Landlord denied this allegation.

The Tenant took issue with the reason given for needing to occupy the rental unit, stating that the Landlord's spouse does not appear to them to struggle with stairs, and even goes up and down the stairs daily to use the laundry room to disturb their quiet enjoyment. The Tenant also argued that the medical documentation submitted clearly shows that the Landlord's spouse was suffering from arthritis prior to entering into the tenancy agreement, and as no documentary evidence stating that their condition has deteriorated was submitted, this medical condition should not now be cause to end the tenancy. Finally, the Tenant argued that it does not make sense that they want the one-bedroom unit, rather than the two-bedroom unit occupied by other tenants, as their unit is closer to the laundry room which is very disruptive, and that they were previously given a different reason for wanting to end the tenancy by the Landlord (their sibling moving in).

The Agent and Landlord denied the allegations made by the Tenant, stating that the Two Month Notice has not been served for any reason other than J.C.'s need to avoid so many stairs and their desire to re-occupy the rental unit. The Agent stated that it is not up to the Tenant to determine J.C.'s health and restrictions, and reiterated that there is medical documentation before me from two physicians indicating that J.C. needs to reoccupy the rental unit due to their knee problems. Further to this, the Agent stated that Arthritis is a degenerative condition and that J.C. is elderly, and as such, the fact that they have had arthritis for a number of years should not prevent them from reoccupying the rental unit for their own use.

Finally, while the Agent acknowledged that there were still stairs to the Tenant's rental unit, they stated that there were only four, which is significantly less, and argued that the Landlord has not served a Two Month Notice to the Tenants of the two-bedroom unit, as it brings in more income, which they require. The Agent also stated that the Landlord's understand the requirement for the rental unit to be occupied for residential use and the consequences under section 51 of the Act for failing to do so.

The parties agreed that rent for February 2023, was paid in full, and as a result, the Landlord sought an OP for February 28, 2023, in the event that the Two Month Notice was cancelled.

Analysis

Based on the documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the Act applies exists between the

parties, that the Two Month Notice was deemed served on the Tenant on September 22, 2022, and subsequently received on September 25, 2022, and that the Two Month Notice was disputed by the Tenant within the time limit set out in section 49(8) of the Act.

Section 49(3) of the Act states that a landlord who is an individual may 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. Residential Tenancy Policy Guideline (Policy Guideline) #2A states that good faith means a landlord is acting honestly, that they intend to do what they say they are going to do, and that they do not intend to defraud or deceive the tenant. It also means that the landlord does not have an ulterior purpose for ending the tenancy, regardless of whether the dishonest motive is the primary reason for ending the tenancy, and that they are not trying to avoid obligations under the Act or the tenancy agreement.

While the Tenant argued that the Landlord is attempting to end their tenancy because of a disagreement about the Landlord's attempt to unlawfully increase the rent, the Landlord denied attempting to increase the rent contrary to the Act and no evidence was submitted by the Tenant in support of this allegation. As a result, I dismiss the Tenant's argument that the Two Month Notice was served due to a dispute over a rent increase. I also dismiss the Tenant's arguments that the Landlord's spouse has no medical need to occupy the rental unit and/or that their medical need should not constitute grounds for ending the tenancy as it pre-existed the start of the tenancy. I have before me letters from two physicians, which I find to be credible, stating that J.C. has arthritis in their knee and difficulty with stairs, and would benefit from residing on the first floor of their home. While I appreciate that J.C. may not appear to the Tenant to sufferer from difficulty with stairs, I am satisfied by the medical documentation before me that they do and I do not find the Tenant's personal observations on this matter to be more compelling or reliable than the doctor's notes. As a result, I accept that the Landlord's spouse has arthritis in their knee and difficulty with stairs.

I also do not accept the Tenant's argument that a pre-existing medical condition should, in the absence of evidence that it has deteriorated, automatically preclude a landlord from ending a tenancy in order to reoccupy the rental unit due to that condition. While the Landlord and Agent have stated that their desire to re-occupy the rental unit was prompted by J.C.'s need to avoid stairs, the Act does not require me to be satisfied that there is a medical need for the rental unit to be reoccupied by the Landlord or their close family member. It states only that I must be satisfied that the Landlord or their close

family member intends in good faith to occupy the rental unit. Regardless of whether J.C.'s health has declined since the tenancy agreement was entered into, I am satisfied that J.C. has a medical condition that makes it difficult for them to use stairs, that they would benefit from living where there are fewer stairs, and that they intend to occupy the rental unit for residential purposes.

Finally, although the Tenant argued that it does not make sense that they would want to occupy the one-bedroom unit rather than the two-bedroom unit, and that they were previously given alternate reasons for wanting to end the tenancy, no corroboratory evidence of these alternate reasons was provided and the Agent argued that this is their preference due to the fact that the two-bedroom unit brings in more income, which I find reasonable. As a result, I dismiss the Tenant's argument that this is further evidence that the Two Month Notice has not been served in good faith.

Based on the above, I find that the Landlord has satisfied me on a balance of probabilities that they and/or their spouse intend in good faith to occupy the rental unit for residential purposes, and I therefore dismiss the Tenant's Application seeking its cancellation without leave to reapply. As their Application was dismissed, I decline to grant them recovery of the filing fee.

As the Two Month Notice complies with section 52 of the Act, I find that the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act. As the effective date is passed, and the Landlord requested an Order of Possession effective at the end of February, I therefore grant the Landlord an Order of Possession for February 28, 2023, at 1:00 P.M. pursuant to sections 55(1) and 68(2)(a) of the Act.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice and recovery of the filing fee is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on February 28, 2023, after service of this Order** on the Tenant. 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.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: February 8, 2023

Residential Tenancy Branch