



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, LRE, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$35,000 pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant had an assistant ("**TW**").

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Severing of Application

Residential Tenancy Branch (the "**RTB**") Rule of Procedure 2.3 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.

The tenant's application to cancel the Notice is not related to her other claims against the landlord. The tenant stated that the most important issue was whether the tenancy could continue. As such, I ordered that all parts of the tenant's application other than her

application to cancel the Notice and to recover the filing fee are dismissed with leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice; and
- 2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting October 1, 2019. Monthly rent is \$710 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$350, which the landlord continues to hold in trust for the tenant. The rental unit is located in a two-floor, single-detached house (the "**House**"). The House is divided into four separate living accommodations. The lower floor has two units, which the landlord rents out on AirBnB. The landlord and her husband live in one unit on the upper floor (the "**Landlord's Unit**") and the tenant resides in a room located in the other unit on the upper floor (the "**Rental Unit**"). Three other rooms in the Rental Unit are rented to other tenants, and all occupants of the Rental Unit share a common living area with one another.

The other occupants of the Rental Unit were also issued notices to end tenancy for landlord's use of the of the Rental Unit and have since moved out. Only the tenant remains.

On September 19, 2022, the landlord served the tenant with the Notice. It specified the reason for ending the tenancy as:

The rental unit will be occupied by the landlord or the landlords close family member (parent, spouse or child; Or the parent or child of that individual's spouse).

The landlord indicated on the Notice that the close family member who will occupy the unit is the "child of the landlord or landlords spouse".

Additionally, the landlord indicated on the Notice that the reason for ending the tenancy as:

The landlord is a family corporation and a person owning voting shares in the family corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

At the hearing, the tenant confirmed that she, not a family corporation, is the landlord, and that the box she checked off indicating that it was a family corporation was done so in error.

The tenant disputed the Notice on October 4, 2022, 15 days after being served with it.

At the hearing, the landlord testified that the reason she served the tenant with the Notice was because the conduct of the tenant towards the end of the tenancy was causing her a great deal of anxiety and “traumatized” her. She testified that her husband was also negatively affected by the tenant's conduct and had to be hospitalised as a result. She did not provide further details of this.

The landlord testified that the tenant and one of the other occupants of the Rental Unit had a falling out over the behaviour of that occupant's cat. The landlord tried to mediate this dispute but was unsuccessful. The landlord testified that the tenant became angry with her as a result and engaged in a variety of behavior which unreasonably disturbed her and her husband. It is not necessary for me to set out the details of this conduct, as they are not relevant to this application.

The landlord also testified that she spoke with members of the RCMP who advised her that the Rental Unit is an illegal suite. The landlord contacted her local municipality to confirm this. She testified that, given the tenant's conduct, and the fact the Rental Unit was illegal, the landlord thought it made sense to end all of the tenancies of the occupants of the Rental Unit, take down the wall between the Landlord's Unit and the Rental Unit, and absorb the area of the Rental Unit into the landlord's living space.

She testified that the reason she issued the Notice was “not just about [the tenant]”. She stated that she was thinking of her and her husband's long-term living arrangements. She testified that her husband's daughter and granddaughter recently returned to Canada and would stay with her from time to time. She also testified that she and her husband could use the additional space for health-related reasons.

The tenant argued that the landlord did not provide any documentary evidence to support her assertion that her daughter or her husband's daughter would be moving into the Rental Unit. Additionally, she disputed that this individual existed at all, or that if she did, she would want to live with the landlord. She testified that she understood the landlord's relationship with her stepdaughter to be fraught. I cannot say how the tenant could have come by this understanding if the stepdaughter did not exist, as alleged by the tenant.

The tenant made lengthy submissions about the dispute with her former roommate about the cat and the ensuing events between her and the landlord. The details are not relevant to this application, so I will not recount them here.

The tenant also cited an e-mail the landlord sent her on June 25, 2022 as the true reason why the landlord ended her tenancy. It states:

My husband and I appreciate your renting from us despite we had minor arguments for the shower door being damaged and replaced. Thinking of your pursuit of high quality life, it would be better for you, mentally and Healthwise, to live in a better place where you are not to be bothered by titious issues with Co-tenants, sharing laundry, kitchen and less privacy (soundproof walls). We are pursuing that type of living sooner or later when the house is sold, or if not in the near future, we are going to move out and let this house be managed by someone else. Honestly landlords living in or not makes a huge difference. When we live here we usually lower our voice but the tenants could be a family with kids living in won't. Anyway when it comes to the time, a two-month only notice will be given to all tenants. These days, looking for an ideal place to live is not easy at all! You may consider this is a heads up for your long-term living plan.

Analysis

Section 49(3) of the Act, in part, states:

Landlord's notice: landlord's use of property

49(3) 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.

RTB Policy Guideline 2A discusses what is meant by “good faith”. It states:

B. GOOD FAITH

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)).

[emphasis added]

Based solely on the landlord's own testimony, I find that the Notice was issued for an ulterior purpose. The bulk of the landlord's evidence related to the conduct of the tenant during the tenancy and how it negatively impacted her and her husband. She also repeatedly stated that the Rental Unit was "illegal" and that she was not permitted to have a second living accommodation on the upper floor of the House. Her testimony regarding how she and her family would use the Rental Unit seemed to be an afterthought and was quite brief.

The landlord's statement that the Notice was not issued "just" because of the tenant is accurate. I am confident that there were factors other than the fact that the landlord did not want the tenancy to continue due to the tenant's conduct. She likely had concerns about the legality of the Rental Unit and she likely wanted additional space for herself and her family.

However, the Policy Guideline is clear. In order for the Notice to be valid, it must have been issued in "good faith", which means the absence of an ulterior purpose for ending the tenancy. Based on the landlord's evidence, I find that there were at least two ulterior purposes for ending the tenancy: the tenant's conduct and the legality of the Rental Unit.

Indeed, I find it is more likely than not that the reason stated on the Notice was not even the landlord's the *primary* purpose for ending the tenancy. I find that the desire to have the tenant move out of the rental unit due to her conduct was a far more important factor to the landlord when deciding to issue the Notice.

As such, I do not find that the Notice was issued in good faith. I therefore order that it is cancelled and of no force or effect.

I explicitly make no findings as to the truth of the landlord's allegations about the tenant's conduct. If the landlord believes the tenant's conduct warrants an eviction, the landlord must serve the tenant with a one month notice to end tenancy for cause, pursuant to section 47 of the Act. I note that, per an email submitted into evidence by the landlord, the landlord was advised of this by a representative of the RTB on September 23, 2022.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover the filing fee of \$100 from the landlord. Pursuant to section 72(2) of the Act, she may deduct this amount from one future month's rent.

Conclusion

I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

The tenant may deduct \$100 from one future month's rent representing the reimbursement of the filing fee.

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 16, 2023

Residential Tenancy Branch