



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, RP, OLC, FFT

Introduction

On November 7, 2022, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated October 17, 2022, for an order that the Landlord make repairs to the unit, site or property, for an order that the Landlord comply with the *Act*, *regulation* and/or the tenancy agreement, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord’s daughter and one of the Tenants (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Exchange of Evidence

At the outset of these proceedings the exchange of evidence was considered, the Landlord confirmed that they received the Tenant’s evidence package

The Tenant testified that they received the Landlord's evidence package, but that it was late and that they did not have sufficient time to review the material before these proceedings. The Landlord testified that they served their evidence package to the Tenants, by Canada Post registered mail sent on March 8, 2023. The parties agreed that the Tenant received this mailing on March 11, 2023, six days before the date of these proceedings.

The Residential Tenancy Branch (RTB) Rule of Procedure states the following regarding the exchange of evidence for a hearing:

3.15 Respondent's evidence provided in single package

"Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, **the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**"

Pursuant to section 3.15 of the RTB rules of procedure, I find that the Landlord was required to ensure that the Tenant had received their evidence package no later than March 10, 2023, seven days before the date of these proceedings. I accept the Tenant's testimony they received the Landlord's evidence package on March 11, 2023, six days before the date of these proceedings, and that they did not have sufficient time to review and prepare a response to the Landlord's documentary evidence. Therefore, as the Tenant did not receive the Landlord's evidence package in accordance with the RTB rules of procedure, I will not consider the Landlord's documentary evidence in my decision for these proceedings.

Preliminary Matters - Related Issues

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well several other issues. I find that these other issues are not related to the Tenants' request to cancel the Notice. As the other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which 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.

Therefore, I am dismissing with leave to reapply, the Tenants' claims for an order that the Landlord make repairs to the unit, site or property, and for an order that the Landlord comply with the *Act*, *regulation* and/or the tenancy agreement.

I will proceed with this hearing on the Tenant's claim to cancel a Two-Month Notice and recover the filing fee for this application.

Issues to be Decided

- Should the Notice dated October 17, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on July 1, 2020, as a one-year fixed term tenancy, that will roll into a month-to-month tenancy under the *Act* after the initial fixed term. That rent in the amount of \$1,700.00, is to be paid by the first day of each month, and that a \$1000.00 security deposit and a \$700.00 pet damage deposit

had been collected by the Landlord. A copy of the tenancy agreement was submitted into evidence by the Tenant.

All parties agreed that the Notice was served on the Tenants by Canada Post Registered mail sent on October 17, 22, indicating that the Tenants were required to vacate the rental unit on January 1, 2023. The Tenant submitted a copy of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- 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).

Please indicate which close family member will occupy the unit.

- The child of the landlord or the landlord's spouse

The Landlord's daughter testified that the Landlord, their mother will be moving to Canada and intends on living in the rental unit in order to be closer to their grandchildren. The Landlord's daughter testified that the Landlord is currently out of the country but that they do have a current visit to come to Canada and that they will book flights for travel as soon as they have a possession date for the rental unit.

The Tenant testified they were initially contacted by the Landlord in September 2022, through an online chat application, where the Landlord told them they were selling the rental unit and that they needed to move out by November 1, 2022. The Tenant testified that they advised the Landlord that the tenancy could not be ended for the sale of the unit and that they could not give notice via online chat. The Tenant submitted a copy of the online chat conversation into documentary evidence.

The Tenant submitted that it is their belief that the Landlord has ulterior motives in ending the tenancy, as the Landlord was trying to sell the rental unit right before they issued this Notice. The Tenant submitted a copy of the MSL listing for the property and a notice of entry letter from the Landlord's relator into documentary evidence.

The Landlord's daughter agreed that initially, the Landlord was going to sell the property but that due to difficulties they had in arranging access for their realtor and the decline in the market, they have decided to live in the unit themselves.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by the Tenant, that the Landlord served the Notice to end their tenancy to them, by Canada Post Registered Mail, sent on October 17, 2022. Accordingly, I find that the Tenants were in receipt of this Notice on October 24, 2022, the first business day, five days after it was mailed by the Landlord, pursuant to the deeming provisions set out in section 90 of the *Act*.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Based on the deemed received date above, I find that the Tenants had until November 8, 2022, to dispute the Notice. In this case, The Tenants filed to dispute the Notice on November 7, 2022, within the required timeline.

The Tenants' application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

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. unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

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.”

I accept the agreed-upon testimony of these parties, supported by the Tenant's evidence that this rental unit was on the market for sale in September 2022, just a few days before this Notice was issued.

I find that the Landlord's attempts to try and sell the property just days before issuing this Notice calls in to question the real motive behind the Landlord's decision to issue this Notice to end tenancy.

I also note that the Landlord's daughter testified, during these proceedings, that it is the Landlord, the owner, their mother, who will be moving into this rental unit. However, the Notice issued by the Landlord recorded that it is the Landlord's child that will be moving into the rental unit. I find this discrepancy between the testimony offered during these proceedings and the written Notice raises further concerns about the Landlord's motives in issuing this Notice.

Overall, I find the contradiction in the written Notice and the testimony I received in these proceedings regarding who is moving into the rental unit, combined with the fact that this rental unit was on the market for sale just days before this Notice was issued has cause me to doubt the credibility of the Landlord's motives in issuing this Notice. As these events do not seem to be in the spirit of ending the tenancy in good faith.

Due to the reasons listed above this, I find that on a balance of probabilities, this Landlord does have an ulterior motive in issuing this Notice. Which I find to be a breach of the good faith provision, required under section 49 of the *Act*. Therefore, I grant the Tenants' application to cancel this Notice.

I find the Notice dated October 17, 2022, is of no force or effect, and this tenancy continues until it is ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. I grant the Tenants permission to take a one-time \$100.00 deduction from a future month's rent in full satisfaction of this award.

Finally, during my review of the tenancy agreement signed between these parties, I noted a breach of the *Act*, that I must address. The tenancy agreement recorded that the Landlord has collected a \$1,000.00 security deposit for this tenancy. Section 19 of the *Act* speaks to the limits on the amount of a deposit during a tenancy, stating the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

As per the tenancy agreement, signed between these parties, the monthly rent for this tenancy is \$1,700.00; therefore, pursuant to section 19(a) of the *Act*, the maximum allowable security deposit for this tenancy is \$850.00 and the maximum allowable pet damage deposit is \$850.00.

However, the tenancy agreement signed between these parties recorded that the Landlord contracted to a \$1,000.00 security deposit and a \$700.00 pet damage deposit for this tenancy. Consequently, I find that the Landlord breached section 19 of the *Act* when they contracted to and collected a \$1,000.00 security deposit for this tenancy, \$150.00 over the maximum allowable amount.

Pursuant to section 19(b) of the *Act*, I find that the Tenants are within their rights to recover this \$150.00 overpayment from the rent.

Conclusion

I grant the Tenants' application, and I find the Notice dated October 17, 2022, is of no force or effect under the *Act*.

The Tenants are authorized a one-time rent reduction of \$100.00 from a future month's rent payable to the Landlord, to recover the cost of the filing fee from the Landlord.

I find that the Landlord is in breach of section 19 of the *Act*, for requiring and collecting a security deposit in excess of at maximum allowable amount under the *Act*.

The Tenants are also authorized to deduct \$150.00 from a future month's rent payable to the Landlord, to recover the overpayment of the security deposit for this tenancy.

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: March 20, 2023

Residential Tenancy Branch