



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OLC, CNR, OLC

Introduction

This hearing dealt with cross-applications filed by the Tenants. On November 16, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*") and seeking an Order to comply pursuant to Section 62 of the *Act*.

On November 16, 2022, the Tenants made another Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act* and seeking an Order to comply pursuant to Section 62 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing as well, with B.W. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed, and there were no issues concerning service. As such, I am satisfied that the Landlord was duly served the Tenants' two Notice of Hearing and evidence packages. Consequently, I have accepted the Tenants' evidence

and will consider it when rendering this Decision. In addition, I have also accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the notices cancelled?
- If the Tenants are unsuccessful in cancelling the notices, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord had no knowledge of when the tenancy started, other than it was "a couple of years ago." He stated that the rent was initially \$800.00 per month, and that it was due on the first day of each month; however, it was now set at \$850.00 per month. He confirmed that he did not comply with the *Act* when he increased the rent. He stated that neither a security deposit nor a pet damage deposit was paid. He acknowledged that he did not create a written tenancy agreement with the Tenants, as is required by the *Act*. It was evident that the Landlord had no understanding of his rights or responsibilities as a Landlord under the *Act*.

Tenant C.S. confirmed that the tenancy first started verbally; however, she advised that a written tenancy agreement was created in or around October 15 or November 15, 2019, with the Landlord. She testified that the parties sat down together to create this tenancy agreement, that it was docu-signed by the Landlord, and that the tenancy was formalized to commence on November 1, 2019, for a fixed-term of 10 years. She confirmed that rent was \$800.00 per month, and that it was due on the first day of each month, but she stated that she was unaware of any rent increase. She claimed that a security deposit of \$400.00 was also paid. She referenced a copy of this written tenancy agreement that was submitted as documentary evidence for consideration.

B.W. advised that this written tenancy agreement was fraudulently created. The Landlord then advised that he does “not remember this at all” and that he did not “think” he signed it.

B.W. then testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on November 11, 2022, by hand and C.S. confirmed that they received this notice. However, B.W. did not submit a copy of this notice for consideration. As being able to review this notice was essential in making a determination of its validity, she was permitted to go home to retrieve this notice and then upload it for consideration.

While she had left, I proceeded to address a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities that was submitted by the Tenants for consideration. Despite the deficiencies on this notice with respect to the correct dispute address, C.S. confirmed that she understood this notice was for them at their specific rental unit. She then advised that while the date that this notice was signed was noted as October 11, 2022, and that the effective date on it was October 21, 2022, she testified that they were never served this notice in October 2022.

The Landlord advised that he had no idea what this notice was as B.W. managed the rental unit. He acknowledged that when rent was paid, it was paid by cash, but he never gave the Tenants any receipts, which is a requirement of the *Act*. When he was questioned what months of rent went unpaid, he could not provide any definitive answer, and then settled on it being five months prior to October 2022.

C.S. then testified that she cannot say either way if rent was paid or not as there are no records. However, she then stated that they “may be” in arrears for rent, that it was “more than likely” that they did not pay some months of rent, and that it was “possibly a

month or two" prior to October 2022 that this non-payment happened. She submitted that their rent for November 2022 was paid to the Landlord on October 25, 2022, that after receiving a notice on November 11, 2022, they did not pay any amount of rent to try and cancel the notice, and that they did not have any authority to withhold the rent. She then testified that the Landlord refused to accept the Tenants' rent from at least December 2022 onwards.

When the Landlord was asked whether or not he ever refused the Tenants' rent, he initially replied "not really." When he was questioned about what exactly this meant, he then hesitated and could not provide a response to clarify what he specifically meant by this. He proceeded to contradict his earlier testimony by stating that the Tenants never offered any rent.

It was at this moment that B.W. had returned, and when she uploaded a copy of the notice for consideration, the notice that she uploaded was dated November 11, 2022, which was different from the notice that was discussed above. She advised that a 10 Day Notice to End Tenancy for Unpaid Rent was never served to the Tenants in October 2022, and she did not know where that notice came from. C.S. advised that they were never served the notice dated November 11, 2022, and only received the one dated October 11, 2022. Regardless, upon further review, the notice that was just uploaded dated November 11, 2022, was examined, and it was apparent that the Landlord did not sign this notice.

At this point, as the Landlord had not served a 10 Day Notice to End Tenancy for Unpaid Rent in October 2022, and had no knowledge of this notice that was submitted as evidence by the Tenants, I find that the notice dated October 11, 2022, is cancelled and of no force or effect. Furthermore, as the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated November 11, 2022, was not signed, I am satisfied that this was an invalid notice as it did not comply with Section 52 of the *Act*. As such, this notice dated November 11, 2022, is also cancelled and of no force or effect.

While the entire 60-minute hearing time was squandered addressing the above notices, there was still the matter of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") to consider.

B.W. advised that the Notice was served by being attached to the Tenants' door on November 1, 2022. The Tenants clearly received this as they indicated as much on their Application, and they disputed the Notice within the required timeframe. Despite the

deficiencies on this Notice with respect to the correct dispute address, C.S. confirmed that she understood this Notice was for them at their specific rental unit. As well, both parties agreed that all four pages of the Notice were served.

The Landlord checked off the reason for service of the Notice as “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)”. Moreover, the Landlord checked off the box indicating that “The child of the landlord or landlord’s spouse” would be the specific person that would be occupying the rental unit. The effective end date of the tenancy was noted as January 1, 2023, on the Notice. As all parties agreed that rent was due on the first day of each month, this Notice was served late to be effective for January 1, 2023, as two, whole months’ notice must be given. As per Section 53 of the *Act*, this effective date will then automatically self-correct to January 31, 2023.

With respect to why this Notice was served, the Landlord advised that it was his intention to have his son, and B.W., move into the rental unit because of security and other issues that are happening in the neighbourhood. As well, he testified that his son can help him with maintenance and other jobs around the property that he is unable to do himself. In addition, he submitted that he was assaulted on the property, and it appeared as if he was inferring that this assault was committed by a person associated with the Tenants.

B.W. confirmed that the Landlord was assaulted on October 2022, and that the Landlord wants his family to live on the property in order to feel safer. As well, she testified that the Landlord wanted his son to move in to help with tasks around the property. She stated that she lives with the Landlord’s son currently, and that she has a few months left in her lease. However, she advised that the son has been prepared to move into the rental unit since December 1, 2022, and that she will join him when her lease is completed. She submitted that she already has half her belongings packed in anticipation of having to move in the near future.

The Landlord then advised that the first time he saw the written tenancy agreement, submitted as documentary evidence by the Tenants, was when the Notice was served to them. He reiterated that he had never seen it before or heard anything of it, and he stated that the signature on it is not even close to his.

C.S. reiterated that a 10-year tenancy agreement was signed with the Landlord, that she made copies of this agreement, and that she provided a copy to the Landlord. She

testified that when they were served the Notice, she reminded the Landlord of this tenancy agreement with the fixed term. However, she stated that the Landlord then turned around and served the 10 Day Notice to End Tenancy for Unpaid Rent as a means to attempt to end the tenancy in a different manner.

Tenant D.P. advised that they have nothing to do with the assault of the Landlord, as the person that assaulted the Landlord was actually the Landlord's friend.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, as the Tenants understood this Notice was for them at the address for which they reside, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states the following:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that a claim of 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)).

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party serving the Notice has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and submissions before me, I find it important to note the Landlord's attitude and demeanour with respect to this tenancy. It was clearly evident that the Landlord cared little for managing this tenancy and adhering to his rights and responsibilities outlined in the *Act*. Whether this was due to intentional neglect, general indifference, or ignorance, it is not entirely clear. However, given that both parties agreed that the tenancy started verbally, and given the Landlord's failure to document anything during the tenancy or provide rent receipts, I am skeptical that the Landlord would have later entered into a written tenancy agreement with the Tenants. Furthermore, as a fixed-term tenancy of 10 years is fairly unusual, I find it reasonable to conclude that this would be fairly memorable for the Landlord to recall if this was agreed to. I am also somewhat skeptical that many parties would agree to a tenancy agreement of that length.

Most importantly though, when reviewing this written tenancy agreement submitted by the Tenants, generally when documents are signed electronically, there is some sort of authentication around the digital signature to confirm that these signatures were provided by the parties. However, there is no such evidence of this, and the Tenants have not provided any other proof that this was the Landlord's digital signature. In addition, given the lackadaisical nature with which the Landlord managed this tenancy, and given his overall, ambivalent demeanour, I am not persuaded that the Landlord

likely would have signed this agreement digitally. As such, I do not find this fixed-term tenancy agreement to be valid, and I am satisfied that the parties were always in a month-to-month, unwritten tenancy.

With respect to the reason on the Notice then, the consistent and undisputed evidence before me is that the Landlord testified that his intention for service of the Notice was due to his feelings of requiring a safer environment, and needing assistance on the property. Moreover, I have before me direct, solemnly affirmed testimony from B.W. that her fiancé (the Landlord's son) had made plans to move into the rental unit to help the Landlord, that he has prepared to move into the rental unit when vacant, and that she would be moving in with him immediately after her lease was completed. Moreover, I have no evidence or testimony before me from the Tenants that this is not the case.

Based on a review of the totality of the evidence before me, I am satisfied that the Landlord, more likely than not, served the Notice in good faith. As I find that the Landlord has adequately justified service of the Two Month Notice to End Tenancy for Landlord's Use of Property dated November 1, 2022, and as the Notice was served in accordance with Section 88 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Given that the self-corrected effective end date of the Notice of January 31, 2023, has passed, I find that the Landlord is entitled to an Order of Possession that takes effect after **two days**. The Landlord will be given a formal Order of Possession which must be served on the Tenants.

As a note, given that an Order of Possession has been granted, it will now be up to the Landlord to use the property for the stated purpose on the Notice. Should the Landlord not comply and use the property for an alternate or dual purpose, the Tenants may apply for the appropriate compensation under Section 51 of the *Act*. It would up to the Arbitrator at the designated hearing to determine if the Landlord complied with the *Act*.

Conclusion

I dismiss the Tenants' Applications in full, without leave to reapply. The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenants. Should the Tenants or any occupant on the premises fail to comply with

this Order, this Order may be filed 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: March 31, 2023

Residential Tenancy Branch