



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNL, FFT

Introduction

This hearing dealt with cross-applications filed by the Tenant. On January 7, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 8, 2023, the Tenant made another Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “*Notice*”) pursuant to Section 49 of the *Act*.

On February 9, 2023, these Applications were originally set down to be heard on May 4, 2023, at 9:30 AM. These Applications were subsequently adjourned, for reasons set forth in the Interim Decision dated May 4, 2023. These Application were then set down for a final, reconvened hearing on May 23, 2023, at 1:30 PM.

The Tenant and Landlord V.V. attended the final, reconvened hearing. 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 at the original hearing, and there were no issues pertaining to service. As such, all parties' evidence will be accepted and considered 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

- Is the Tenant entitled to have the notices cancelled?
- If the Tenant is unsuccessful in cancelling the notices, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

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.

All parties agreed that the Tenant lived with Landlord G.V. originally, and shared a kitchen and bathroom with him until she moved to the garage on or around September 1, 2022. At this point, they agreed that a tenancy commenced under the purview of the *Act*. The parties then agreed that the Tenant rented one of the two bedrooms in the garage only, and also had access to the kitchen and living room. Rent was established at an amount of \$650.00 per month and was due on the first day of each month. A security deposit was not paid. A written tenancy agreement was not created for this tenancy.

With respect to the Landlords' One Month Notice to End Tenancy for Cause, that was incorrectly dated December 30, 2023, as G.V. did not complete this by including any details of cause on the second page of the notice, I am satisfied that this notice is invalid because it does not meet the requirements of Section 52 of the *Act*. As such, this notice is cancelled and of no force or effect.

All parties also agreed that the Two Month Notice to End Tenancy Tenant for Landlord's Use of Property was served on or around January 31, 2023, by hand. The reason V.V. served the Notice is because "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)." As well, V.V. indicated that it would be "The landlord or the landlord's spouse" that would be specifically occupying the rental unit. The effective end date of the tenancy was noted as March 31, 2023, on the Notice.

At the reconvened hearing, V.V. read directly from her written statement and testified that her and G.V. both own the duplex that they reside in, and that she converted the garage into a "clubhouse" sometime prior to 2019 that she never intended to rent to anyone. However, she contradictorily stated that the garage was not vacant prior to the Tenant moving in as G.V. would put people in there for rent. She acknowledged that only one bedroom in the garage was rented to the Tenant, and that the other bedroom was reserved for her own guests, which is contrary to her testimony at the original hearing that they would be getting a second tenant for the garage and that they did not intend to keep this second bedroom for their own use. As well, I find it important to note that G.V. confirmed that he had been renting the garage to different people.

She then read out from her statement of the four reasons why the Notice was served. When she was questioned about the legitimacy of these submissions, she provided vague, hesitant, and unconvincing responses. She also cited Policy Guideline # 2A with respect to their right to reclaim the rental unit as a living space.

The Tenant confirmed that the tenancy was only for one bedroom in the garage, where she also had access to the kitchen and living room. She provided testimony on varying issues, most of which were not relevant to the reason this Notice was served. There was little testimony that she provided that was relevant; however, her position appears to be generally that this Notice was not served in good faith, but was an attempt to retaliate against her, which is consistent with service of the One Month Notice for Cause in December 2022.

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 Landlords' right to end a tenancy in respect of a rental unit where the Landlords or a close family member of the Landlords intend in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords; 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.

With respect to the Notice, in considering the Landlords' reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlords, 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 Landlords are permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit. I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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.

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may 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 testimony before me, while I have testimony from V.V. about her desire to move into the rental unit, I note that she has provided little documentary evidence to support many of those submissions. Moreover, I note that her and G.V. were doing bizarre things with the garage, and G.V.'s home, by constantly moving people in and out that they rented to, and possibly even living with them. V.V. even acknowledged that they had no knowledge of the *Act* or of their rights and responsibilities as Landlords under the *Act*. As well, it was clear that there was some personal history between the Landlords and the Tenant prior to this tenancy starting as she had known them for some time, and had lived with G.V. for a period of time before the relationship between the parties became frayed.

Moreover, I found V.V.'s testimony about their original intent for the garage to be solely for their own use to be contradictory, as it was clear that they were also housing people there, including the Tenant.

Furthermore, I found that when V.V. was questioned about the four reasons for why the Notice was served, her responses were delayed, vague, and inconsistent. It was obvious that she was crafting answers on the spot in a poor attempt to concoct plausible responses that would justify service of the Notice. Furthermore, she claimed that the garage was built as a "clubhouse" in 2019, and it was evident that this garage included two small bedrooms. However, if it was built truly for this purpose such a short time ago, it is unclear to me why V.V. is claiming now that her intent is to break down the walls to make one large bedroom.

When questioning V.V., and assessing the consistency of her testimony, I do not find it in any way to be reliable or truthful, as it was clearly evident that they had been using their property in an unusual rental manner, by renting different rooms to people, in the house and the garage, and moving people in and out frequently. Given that the Landlords clearly had no knowledge of the *Act*, I find it more likely than not that they had been engaging in some sort of pattern where it is possible that these other rentals could have also fallen under the jurisdiction of the *Act*, and that they were unaware of the consequences of their actions. Based on the evidence and testimony of the parties, I am satisfied that the Landlords had inadvertently entered into a tenancy with the Tenant likely unknowingly.

Given all the doubts created by V.V.'s dubious testimony, and their lack of understanding when renting out their properties, I am satisfied that when they realized that the *Act* had jurisdiction over this tenancy, V.V.'s submissions were created to

provide a false narrative in an effort to portray a scenario which did not exist, as they had never encountered this situation before. Considered in its totality, I do not find the Landlords to be credible as they failed to provide consistent, logical, compelling, or persuasive testimony or documentary evidence. As the burden is on the Landlords to prove why the Notice was served, I am not satisfied by V.V.'s testimony that this Notice was served in good faith as it is clear that there was conflict between the Landlords and the Tenant, and that the Landlords wanted to end this tenancy because of it.

Based on my assessment of the evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlords served the Two Month Notice to End Tenancy for Landlord's Use of Property in good faith. As such, I find that this Notice dated January 31, 2023, is cancelled and of no force and effect.

As the Tenant was successful in the first Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause, incorrectly dated December 30, 2023, to be cancelled and of no force or effect.

In addition, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2023, to be cancelled and of no force or effect as well.

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: May 24, 2023

Residential Tenancy Branch