



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, RP, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy signed on March 26, 2023 (the “Two-Month Notice”);
- an order pursuant to s. 32 for repairs; and
- return of the filing fee pursuant to s. 72.

D.S. appeared as the Tenant. H.K. appeared as the Landlord and was represented by J.D. as his agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that he served the Landlord with his application and evidence. The Landlord’s agent acknowledged its receipt without objection. I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant’s application and evidence.

The Landlord’s agent advised that the Landlord’s evidence was personally delivered to the Tenant on May 8, 2023. The Tenant acknowledges its receipt, though raises issue due to late service of evidence.

Rule 3.15 of the Rules of Procedure requires respondents to serve their evidence on applicants and that that evidence must be received by applicants not less than 7 days prior to the hearing. In this instance, the hearing was conducted on May 15, 2023. I note

that the issue with respect to late service is largely technical in this case, given that May 8, 2023 was seven days ago. I also note that the object of the rules is to ensure a procedurally fair process, such that both sides have sufficient notice of each others evidence, has time to review it, and prepare for the hearing.

The Landlord's evidence in this case is largely limited to a separation agreement, such that I do not find that it was so extensive that the Tenant could not review it and prepare in advance of the hearing. Indeed, the Tenant further advises that he served additional response evidence after receipt of the Landlord's evidence, which I note is in contravention of Rule 3.14 of the Rules of Procedure.

I find that the Landlord did serve his evidence in compliance with the Rules of Procedure and did so in compliance with s. 88 of the *Act*. I further find that there is little prejudice to the Tenant to its inclusion given the limited nature of the evidence.

Preliminary Issue – Tenant's Claims

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to each other. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The primary issue in the application is whether the Two-Month Notice is enforceable or not. Indeed, should the notice be upheld and the tenancy end, the issue of repairs would be moot.

Accordingly, I find that the Tenant's claim for repairs under s. 32 of the *Act* is not sufficiently related to the claim cancelling the Two-Month Notice. I dismiss this claim and depending on the outcome of the matter, it may be dismissed with or without leave to reapply.

The hearing proceeded strictly on the issue of the enforceability of the Two-Month Notice.

Issues to be Decided

- 1) Has the Landlord demonstrated good faith intention to occupy the rental unit pursuant to the Two-Month Notice?
- 2) Is the Tenant entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the Act. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit in September 2014.
- Rent of \$3,210.00 is due on the first of each month.

The Two-Month Notice

Pursuant to s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8). If disputed, the respondent landlord bears the burden of proving the notice was issued in good faith.

The Landlord's agent advises that the Two-Month Notice was personally delivered to the Tenant on March 26, 2023. The Tenant acknowledges receiving it on that date. I find that the Two-Month Notice was served in accordance with s. 88 of the *Act* and was received on March 26, 2023.

Good Faith

I am provided with a copy of the Two-Month Notice by the Tenant showing it was issued for occupation by the Landlord or the Landlord's spouse. The Landlord's agent advises that the Landlord and his spouse recently separated and that he intends to move into the property. I am provided with a copy of a separation agreement dated February 16, 2023 by the Landlord.

The Landlord's agent further tells me that subject property will be retained by the Landlord pursuant to the terms of the separation agreement and that he is currently living in the former matrimonial home with his former spouse. The Landlord's agent says that the separation agreement requires the Landlord to move out of the matrimonial home by June 2023.

The Tenant argues that the Landlord issued the Two-Month Notice in bad faith. He says that he had a conversation with the Landlord in early March 2023 whereby the Landlord advised of a desire to renovate the property, that he was willing to give the Tenant four months to move out, and would grant the Tenant a right of first refusal when the renovations were complete. The Tenant says he turned down the Landlord's offer.

The Tenant further raised issue with the separation agreement itself, pointing to various issues and highlighting that it refers to giving notice to the tenants at the rental unit. The portion mentioned by the Tenant is reproduced below:

LIVING SEPARATE AND APART

1. The Parties will, from the date of execution of this Agreement, live separate and apart from each other. Neither Party will attend the other's living space or work without invitation or approval. The parties will commence living separate and apart in June 2023 - the parties will take each one their homes giving proper notices to any tenants at [the residential property].

I have redacted the reference to the residential property in the interest of the parties' privacy.

The Landlord's agent acknowledges that the Landlord did have a conversation with the Tenant in early March 2023 and did offer him four months notice and a right of first refusal. The Landlord's agent argues that the Landlord is somewhat emotional with respect to his separation and shared a level of reticence in sharing these details with the Tenant when they spoke in early March. The Tenant argued that the Landlord is a realtor and should have knowledge of the various requirements for granting notice under the *Act*.

Policy Guideline #2A provides the following guidance with respect to the good faith requirement imposed by s. 49:

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)).

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.

By outward appearances, the Landlord's rationale is clear and compelling: he wants the Tenant out so he can move-in as he has separated from his spouse, is still living with her in the former family home, and that she is due to take ownership of the former family home. The issue in this instance is that the Landlord admits that in early March 2023 he asked the Tenant to vacate the rental unit with four months notice and offered a right of first refusal to the Tenant for him to move back in once the renovations were complete.

When that conversation took place, the Landlord had signed the purported separation agreement, which specifically contemplates giving proper notice to any tenants at the residential property.

The Landlord's agent argues that the Landlord was somewhat embarrassed to discuss his need to occupy the rental unit in detail with the Tenant. However, I do not accept that this explains the Landlord's conduct. In the conversation with the Tenant, the Landlord offered a right of first refusal to the Tenant, which does not rationally correspond to the Landlord's current position that he needs the place pursuant to a separation by pointing to an agreement signed some weeks prior to making the offer to the Tenant. Further, the purported separation agreement makes specific reference to the Landlord's need to move out of the matrimonial home in June 2023, a point argued by the agent at the hearing. However, this is incongruous with an offer to the Tenant that he move-out after June 2023.

I agree with the Tenant. If the Landlord needed the property due to a separation, he would have surely communicated the same to the Tenant in early March. Indeed, the separation agreement, strangely, specifically mentions that proper notice would be given to the tenants at the residential property. Considering the purported separation agreement given to me by the Landlord, the offer he made to the tenant makes absolutely no sense. Indeed, it appears more likely than not that the Two-Month Notice was issued after the offer was refused by the Tenant and that the rationale given by the Landlord in this matter is an attempt to otherwise justify the notice.

I find that the Landlord has failed to demonstrate good faith intention to occupy the rental unit. The Two-Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The Two-Month Notice is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant's claim pursuant to s. 32 of the *Act* for repairs, which was severed from the application pursuant to Rule 2.3, is dismissed with leave to reapply.

I find that the Tenant was successful. Pursuant to s. 72(1) of the *Act*, I order the Landlord pay the Tenant's filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the

Tenant withhold \$100.00 from rent due to the Landlord on **one occasion** in full satisfaction of his 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: May 15, 2023

Residential Tenancy Branch