



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenants seek:

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 16, 2022 (2 Month Notice) pursuant to section 49 of the Act.

The original hearing of the Application was held on May 2, 2023 (Original Hearing). The Landlord (HZ), an interpreter and agent for the Landlord (MZ), the two Tenants (ZL and JL) and an interpreter (KC) for the Tenants attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Notice of Dispute Resolution and Tenants' Evidence and Service of Landlord's Evidence on Tenants

At the Original Hearing, the Tenants stated they served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord in-person. The Landlord denied he was served in-person with the NDRP by the Tenants. The Tenants did not provide any proof they served the NDRP on the Landlord, such as a witness statement or other evidence of service. The Tenants did not call a witness to corroborate their testimony that they served the NDRP on the Landlord in-person. As such, I find the Tenants have not proven, on a balance of probabilities, that the NDRP was served on the Landlord.

At the Original Hearing, MZ stated the Landlord served his evidence on the Tenants by text message. The Tenants denied receiving the Landlord's text message. Serving documents for the purposes of the Act by text message is not a method of service that is permitted by section 88 of the Act. As such, I find the Landlord has not proven, on a balance of probabilities, that the Landlord's evidence was served on the Tenants.

As the Tenants did not prove they served the NDRP on the Landlord and the Landlord did not prove he served his evidence on the Tenants, I adjourned the Original Hearing and issued a decision dated May 3, 2023 (Interim Decision) pursuant to Rule 7.8 of the RoP. I ordered that the hearing to be reconvened on June 15, 2023 (Adjourned Hearing). In the Interim Decision, I ordered the Tenants to serve the Landlord with copies of the Notice of Adjourned Hearing, NDRP, Interim Decision, and re-reserve their evidence, on the Landlord. In the Interim Decision I ordered the Landlord to re-reserve his evidence on the Tenants. The Interim Decision ordered the parties not to serve on each other with, or submit to the Residential Tenancy Branch (RTB), any additional evidence.

HZ, MZ, ZL and an interpreter (MX) attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At the Adjourned Hearing, the parties confirmed they served the documents on each other as ordered in the Interim Decision.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 2 Month Notice?
- If the Tenants are not entitled to cancellation of the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on April 30, 2019 and the Tenants were required to pay rent of \$1,100.00 per month. The Tenants were required to pay a security deposit of \$550.00. The MZ acknowledged the Landlord received the security deposit and that he was holding it in trust for the Tenants. The parties agreed the

Tenants have paid the rent for June 2023. Based on the foregoing, I find there is a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Tenants submitted a copy of the 2 Month Notice into evidence. MZ stated the Landlord served the 2 Month Notice on the Tenants' door on December 16, 2022. ZL acknowledged the Tenants received the 2 Month Notice. The 2 Month Notice stated the reason for ending the tenancy was because the rental unit will be occupied "by the child of the landlord or landlord's spouse".

MZ stated:

- he is 24 years old and is the child referred to in the 2 Month that that will be occupying the rental unit
- there are three bedrooms in the upper floor of the residential property
- his parents, one sibling and himself are living in the upper floor of the residential property
- he is the oldest child, has a girlfriend and is seeking personal privacy that he does not currently have while living in the upper floor
- he wants less help from his parents

ZL stated:

- there are two rental units downstairs in the residential property, one of which is a one bedroom unit and the other, in which the Tenants are currently living, is a two bedroom
- the Tenants do not believe ZL requires the rental unit and the Landlord could have given notice to end the tenancy for the Landlord's own use to the tenant of the one bedroom unit
- the Landlord initially asked the Tenants to vacate the rental unit without serving a notice to end tenancy
- when the Tenants refused to vacate the rental unit, the Landlord served the 2 Month Notice on them
- the Landlord attempted to raise the rent in 2020 but admitted that the Landlord has not attempted to raise the rent since 2020
- the Tenants do not believe the Landlord was acting in good faith when he served the Tenants with the 2 Month Notice.

MZ stated he wants to occupy the rental unit because he intends to use one bedroom for sleeping and the other bedroom for an office. The Landlord stated he was acting in good faith when he served the 2 Month Notice on the Tenants. MZ stated he intends, in good faith, to occupy the rental unit within a reasonable period of time after the Tenants vacate the rental unit and for at least six months thereafter.

Analysis

The parties agreed the 2 Month Notice was served on the Tenants' door on December 16, 2022. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the 2 Month Notice, or January 3, 2023, being the next business day after expiry of the 15-day dispute period. The records of the Residential Tenancy Branch disclose the Tenants filed the Application to dispute the 2 Month Notice on January 3, 2023. As such, I find the Tenants made the Application within the 15-day dispute period required by section 49(8)(a) of the Act.

Residential Tenancy Policy Guideline# 2A ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."

MZ stated he is the child referred to in the 2 Month and that he will be occupying the rental unit with his girlfriend. MZ stated he is currently living on the upper floor of the residential property with his parents and a sibling. MZ stated he and his girlfriend are

seeking privacy. MZ stated he wants to occupy rental unit, rather than the adjoining one bedroom rental, so that he may use one bedroom for sleeping and one bedroom for an office.

ZL admitted the Landlord has not attempted to raise the rent since 2020 nor did she provide any testimony that the Landlord has refused to perform repairs on the rental unit. ZL stated the Landlord asked the Tenants to vacate the rental unit and, when they refused, the Landlord served them with the 2 Month Notice. ZL stated the Landlord could have given notice to the other tenant of the one bedroom unit for MZ's use rather than the rental unit.

I find MZ's explanation for why he wants to move into the rental unit rather than the adjoining one bedroom unit to be reasonable. I find that there is no evidence that the Landlord has attempted to raise the rent of the rental unit since 2020. I find the Tenant did not provide any evidence that the Landlord has refused to perform repairs to the rental unit.

The Landlord testified he was acting in good faith when he served the 2 Month Notice on the Tenants so that MZ could occupy the rental unit. MZ stated he intends, in good faith, to occupy the rental unit within a reasonable period of time after the Tenants vacate the rental unit and for at least six months thereafter. MZ provided a reasonable explanation for why he wants to occupy the rental unit rather than the other one bedroom rental unit downstairs. In these circumstances, I find the Landlord has the right to select one of two basement units based on their size and amenities. There is no evidence before me that the Landlord attempted to raise the rent after 2020 or that the Landlord has failed to complete repairs to the rental unit. I also find that the failure of the Landlord to serve a notice to end tenancy when he asked the Tenants to vacate the rental unit before he served the 2 Month Notice does not in itself taint the Landlord's good faith intentions to end the tenancy when the 2 Month Notice was subsequently served on the Tenants.

Based on the foregoing, I find the Landlord and MZ have proven, on a balance of probabilities, that the Landlord was acting in good faith at the time he served the 2 Month Notice on the Tenants. As such, I find the Landlord is entitled to end the tenancy pursuant to section 49(3) of the Act. Accordingly, I dismiss the Application.

I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an Order of Possession. Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the 2 Month Notice and find it complies with the form and content requirements of section 52. As such, pursuant to section 55(1), I grant the Landlord an Order of Possession effective at 1:00 pm on June 30, 2023.

Section 51(1) of the Act states:

- 51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Tenants have paid for the month of June 2023 but they have not received one-month free rent or, alternatively, compensation that is equivalent to one months' rent pursuant to section 51(1) of the Act. As such, I the Landlord must pay the Tenants the equivalent of one months' rent, being \$1,300.00.

Conclusion

The Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective at 1:00 pm on June 30, 2023. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. If the Tenants fail to comply with the Order of Possession, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 21, 2023

Residential Tenancy Branch