Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The ***Act***) in response to cross applications from the parties. Tenant YX filed their application on January 31, 2024, and seeks the return of their filing fee as well as cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property.

The Landlord filed their application on February 15, 2024, and they seek an order of possession as well as the return of their filing fee.

Service of Records

The Landlord was represented at the hearing by an agent, SM, who testified that they are employed by RTC. The Landlord submitted an authorization letter as evidence, wherein it is stated they are authorizing RTC to act as their agents in this hearing.

SM testified that they received the Tenant's application by email and raised no issues regarding the method of service. I find, pursuant to section 71(2)(b) of the *Act*, that the Tenant sufficiently served the Landlord with their application for the purposes of the *Act*.

The Tenant, YX, testified that YMCL, the corporate entity also named as a respondent by the Landlord in their application, is YX's own company. The parties' tenancy agreement names both YX and YMCL as tenants. YX testified that they never received the Landlord's application or the Landlord's evidence.

SM testified that on February 16, 2024, the Landlord served their application, by registered mail, to the Rental Unit. The Landlord submitted a copy of a registered package bearing the Rental Unit's address, as well as a Canada Post Customer Receipt showing the Rental Unit's address along with a tracking number. I have copied the tracking number on the cover page of my decision.

SM testified that on March 14, 2024, they served the Landlord's documentary evidence to the Tenant at the Rental Unit, by registered mail. SM provided a tracking number which I have copied on the cover page of my decision.

SM also testified that they emailed all the Landlord's records to the Tenant and submitted a copy of the email sent to the Tenant, which I have viewed.

The Tenant testified that they received nothing from the Landlord and that they rarely check their email because they are old. Policy Guideline 12 provides the following:

> Where a record is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.
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> A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the record was not received or evidence of the actual date the record was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the record has been sufficiently served, and the date on which it was served.

In this case the Tenant testified they are residing at the Rental Unit. There is no evidence before me that they were on vacation during the relevant time periods above.

I checked both tracking numbers provided by the Landlord on the Canada Post website. The March 14, 2024, registered package containing the Landlord's evidence is currently waiting to be picked up by the Tenant at a local post office. Canada Post tracking information shows that one or more notice cards were left by Canada Post indicating where the package is to be picked up. The registered package containing the Landlord's application went unclaimed by the Tenant and after one month it was returned.

I find the Tenant's failure to check their mail and their failure or refusal to pick up the Landlord's packages from the local post office does not override the deeming provisions of section 90 of the *Act*.

I find the Tenant is deemed served with the Landlord's Proceeding Package, pursuant to section 90 of the *Act*, on February 21, 2024, pursuant to section 89 of the *Act*, on the fifth day after its registered mailing. I find the Tenant is deemed served with the Landlord's registered package containing the Landlord's documentary evidence, pursuant to section 90 of the *Act*, on March 19, 2024, pursuant to section 88 of the *Act*, on the fifth day after its registered mailing.

Background Facts and Evidence

The parties agreed that this tenancy began on May 1, 2020, with a current monthly rent of $2,070.00, due on the first day of every month, and a security deposit in the amount of $1,100.00.

The Landlord submitted an #RTB-34 Proof of Service form pertaining to a Two Month Notice to End Tenancy for Landlord's Use of Property, signed by an agent of the

Landlord on January 25, 2024, with an effective date of March 31, 2024 (the **Notice**). The proof of service form is signed by JW and is dated January 25, 2024. JW has indicated that they served the Tenant with a copy of the Notice, by email and by registered mail.

SM testified that JW served the Notice by registered mail on January 25, 2024, and provided me with a tracking number.

The Landlord submitted a copy of the email that JW sent to the Tenant on January 25, 2024, containing a copy of the Notice. The Tenant testified that they received that email along with the Notice. Pursuant to section 71(2)(b) of the *Act*, I find the Tenant was sufficiently served with a copy of the Notice on January 25, 2024.

Both parties submitted copies of the Notice, which I have viewed. On the second page of the Notice the Landlord or their agent have stated that the tenancy must come to an end because the child of the Landlord or the child of the Landlord's spouse will be occupying the Rental Unit after the end of the tenancy.

The Landlord's daughter, YL, attended the hearing and testified that they moved to Canada in March 2024, from their home country, to attend school in Canada. The Landlord submitted a copy of a flight itinerary for YL's flight to Canada. The date on the flight itinerary is stated as "28MAR". The date of issuance for the flight itinerary is February 5, 2024. No boarding passes or other documents pertaining to YL's residency or move from their home country were submitted.

YL testified that they are currently residing with friends. The Landlord submitted a copy of a letter with the following subject line: "RE: Mortgage Brokerage in British Columbia Course [YL] – Student [redacted by Landlord]" (the **Education Letter**). In the Education Letter, the writer states that the course is a "self-paced non-credit licensing course consisting of 20 multiple choice on-line assignment and a final examination".

YL testified that they last resided in British Columbia when they were a child and the reason why they moved back to the British Columbia is because they need "to study". They testified that they plan to reside in British Columbia for three years.

The Tenant testified that in 2023 the Landlord attempted to unsuccessfully evict them from the Rental Unit. YL provided me with a file number for a previous dispute in this tenancy and further provided consent for me to search the Residential Tenancy Branch database. After searching the Residential Tenancy Branch database, I found two prior disputes between the Landlord and the Tenant, both from 2023 (I have copied file numbers for both prior disputes on the cover page of my decision). The first dispute

resulted in a participatory hearing on March 14, 2023, before Arbitrator AD (the **First Dispute**). I have reviewed Arbitrator AD's decision for the First Dispute. Arbitrator AD canceled the Landlord's One Month Notice for Cause and found the Landlord had not established a ground to end this tenancy. The second dispute resulted in a participatory hearing before Arbitrator AM on August 11, 2023, regarding another One Month Notice to End Tenancy for Cause (the **Second Dispute**). I have reviewed the decision for the Second Dispute. Arbitrator AM cancelled the Landlord's one month notice because the Landlord failed to prove the Tenant breached a material term of the tenancy.

The Tenant testified, through their interpreter, that they believe the Landlord is attempting to evict them to increase rent and that they do not believe the Landlord's child will occupy the Rental Unit if the tenancy ends.

In their application, the Tenant has stated that the Landlord is selling the Rental Unit. The Landlord submitted a screenshot of the Rental Unit listing on the Paragon MLS portal which shows the Rental Unit's listing is terminated. SM testified that the Landlord first listed the Rental Unit for sale in October of 2023 and they took the listing off the market in January 2024.

Analysis

Should the Landlord's Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 49 of the *Act* states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the *Act* states that upon receipt of a Notice to End Tenancy for landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The Tenant disputed the Notice on January 31, 2024. I have already found the Notice was sufficiently served to the Tenant on January 25, 2024; therefore, I find that the Tenant has applied to dispute the Notice within the above time frame. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the Notice.

The Tenant disputes that the Notice was issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the *Act*. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd*, (2011 BCSC 827), the Supreme Court of British Columbia held that 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 tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v Aarti Investments Ltd*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the Two Month Notice to the Tenant and obtain an end to this tenancy. I make this decision for the reasons below.

YL testified that their parents are not residing in Canada, and they need a place to stay since they have relocated to Canada. The only evidence before me that YL has relocated to Canada is a flight itinerary that shows their name, dated February 5, 2024. The flight itinerary states that the date of the flight is March 28, 2024. Even if I accept YL's testimony that they used the submitted ticket and traveled to Canada on March 28, 2024, notwithstanding the fact that the Landlord did not submit a boarding pass or any other documents that would show YL is currently physically present in Canada, I must be able to find, on a balance of probabilities, that YL is planning to reside in Canada and at the Rental Unit as they say they will, for a period of at least six months.

The Education Letter clearly shows that the course YL has enrolled in is a "self-paced" online course without lectures. They are therefore not required to be in Canada to complete this course. The Education Letter states that assignments and final examination will be online. The Education Letter is therefore not sufficient to establish that they have a need to reside in Canada.

They testified that they are in Canada to study, after which time they will move back to their home country (YL testified they plan on staying in Canada for three years). It is unclear to me why YL would travel to Canada to "study" as they say, in an online self-paced licensing course that is only useful in the jurisdiction of British Columbia, just to then fly back to their home country as soon as the course is complete. I find this testimony somewhat implausible.

The parties have been involved in at least two prior disputes, namely the First Dispute and the Second Dispute, whereby two different arbitrators canceled two different eviction notices served to the Tenant by the Landlord. This fact on its own is not conclusive, but when I consider all the evidence before me, I find the parties' previous disputes relevant in deciding whether the Landlord is acting in good faith.

In short, I did not find YL's testimony convincing as it lacked any detail beyond a cursory statement that they must be in Canada to study, which I find they failed to establish, because the Education Letter shows that the course that they enrolled in is an online self-paced course with online assignments.

Given the totality of the evidence before me, I find that the Landlord has failed to establish that they are acting in good faith. I find they have an ulterior motive in this case, which is to end this tenancy as they tried to do on two prior occasions in 2023. Therefore, the Tenant's application is granted for cancellation of the Landlord's Notice under section 49 of the *Act*.

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application under section 72 of the *Act* and I award them their $100.00 filing fee, to be collected from the Landlord.

Pursuant to section 72 of the *Act*, and in full satisfaction of the $100.00 award to the Tenant, **I order the Tenant** to withhold $100.00 from one future rent payment to the Landlord on a **one-time basis**.

If the Tenant withholds $100.00 from one future rent payment pursuant to my order above, the Landlord may not issue a 10-day notice to end tenancy for unpaid rent.

Conclusion

The Landlord's application is dismissed, without leave to reapply, in full.

The Tenant's application is granted for cancellation of the Landlord's Notice. I have canceled the Landlord's Two Month Notice, dated January 25, 2024. The Notice is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I award the Tenant their $100.00 filing fee, in full satisfaction of which **I order the Tenant** to withhold $100.00 from one future rent payment to the Landlord on a **one-time basis**.

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: April 17, 2024

Residential Tenancy Branch