Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on April 10, 2020 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in April of 2020 sent to the Tenant, via email. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In May of 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that some of this evidence was served to the Landlord, via email, on May 12, 2020 and some was served, via email, on May 18, 2020. The Landlord acknowledged receiving this evidence. He stated that he has had sufficient time to consider the evidence and, as such, the evidence was accepted as evidence for these proceedings.

On May 17, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, on May 17, 2020. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenants submitted a large amount of documentary evidence, some of which is entirely irrelevant to the issues in dispute. All of the evidence submitted by the parties has been reviewed, but that evidence is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenants agree that:

- This tenancy began on April 01, 2019;
- Rent is due by the first day of each month;
- A Two Month Notice to End Tenancy for Landlord's Use was posted on the door of the rental unit on March 23, 2020;
- The Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by May 31, 2020; and
- The Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy is ending because the Landlord or a close family member of the Landlord intends to occupy the rental unit.

The Landlord stated that he has separated from his common-law partner in early March of 2020; that he is currently sleeping on his parent's couch, and that he intends to move into the rental unit.

The female Tenant stated that the Tenants do not believe the Landlord is separated from his common-law partner, as he has been dishonest with them in the past.

The Landlord submitted a separation agreement, which he contends is signed by him and his former partner. This appears to be a separation agreement the signatories have completed without the aid of legal counsel. In the agreement the Landlord agrees to move out of their shared property by July 31, 2020.

The Tenants question the validity of this separation agreement, as they contend it was written on a document of "American standard".

The Landlord submitted a letter from a medical practitioner, dated May 13, 2020, in which the practitioner declares that he has spoken with the Landlord about his relationship with his common-law partner and that they are separating.

The Landlord submitted a letter from a chartered accountant, dated May 17, 2020, in which the author declares that the Landlord has separated from his common-law partner.

The Tenants submit that the Two Month Notice to End Tenancy for Landlord's Use was not served in good faith. The Tenants submit that the Two Month Notice to End Tenancy for Landlord's Use was served, in part, because a One Month Notice to End Tenancy for Cause and a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that were served by the Landlord were set aside.

The Landlord and the Tenants agree that there was a dispute resolution proceeding on January 28, 2020, which resulted in a Residential Tenancy Branch Arbitrator set aside a One Month Notice to End Tenancy for Cause and a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that were served by the Landlord. I have reviewed the decision from the January 28, 2020 proceedings, the file number of which appears on the first page of my decision.

The Landlord and the Tenants agree that there was a dispute resolution proceeding on November 25, 2019, which resulted in a Residential Tenancy Branch Arbitrator concluding that the Tenants had submitted insufficient evidence to establish that fibreglass in the rental unit has negatively impacted their health. I have reviewed the decision from the November 25, 2019 proceedings, the file number of which appears on the first page of my decision.

In an email, dated February 27, 2020, the Tenants declare that the Landlord has “not addressed the serious issue of air quality in the house”. The Tenants contend that the Landlord threatened to evict them, in an email dated March 02, 2020, if they continued to raise the issue with air quality/fibreglass in the rental unit.

The Landlord stated that he did give the Tenants written notice that they should refrain from raising this previously litigated issue and that in an email, dated March 02, 2020, he declared that continuing to raise the issue could result in an eviction. The Landlord stated that the written warning was issued upon advice provided to him by an Information Officer at the Residential Tenancy Branch, in accordance with Residential Tenancy Branch Policy Guideline #8.

The Tenants contend that the Landlord was seeking to find ways to evict them by contacting their neighbour to ask if the Tenants had been smoking. The Landlord agrees that he did ask the neighbour about smoking on March 13, 2020 because he was concerned the Tenants were smoking inside the unit. He stated that after learning there were no issues, he took no further action.

The female Tenant stated that she does not believe the Landlord signed the Two Month Notice to End Tenancy for Landlord's Use. She bases this belief of her opinion that the Landlord's signature appears to be significantly different than his signature on the separation agreement he submitted in evidence. She stated that both of those signatures appear to be different than his signature on the tenancy agreement.

The Landlord agreed that all three of the signatures appear to be different. He stated that he signs his name in various ways and that he signed all three documents.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act*) authorizes a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I accept the Landlord's testimony that he recently separated from his common-law partner and that, as such, he intends, in good faith, to move into the rental unit. I found the Landlord's testimony in this regard to be consistent and forthright.

I find the Landlord's testimony that he intends to move in to be credible, in part, because it was corroborated by the separation agreement that was submitted in evidence.

I was not influenced by the Tenants' submission that the separation agreement is somehow invalid because it was written on a document of "American standard". In my view the document clearly conveys the intent of the signatories.

I find the Landlord's testimony that he intends to move in to be credible, in part, because it was corroborated by the letter from the medical practitioner, dated May 13, 2020, in which the practitioner declared that the Landlord has separated from his common-law partner.

I find the Landlord's testimony that he intends to move in to be credible, in part, because it was corroborated by the letter from a chartered accountant, dated May 17, 2020, in which the author declared that the Landlord has separated from his common-law partner.

Even if I accepted the Tenants' submission that the Landlord has been dishonest with the Tenants in the past, I find that there is insufficient evidence to establish that the Landlord is not being honest about his intent to move into the rental unit because he has separated from his common-law partner.

Residential Tenancy Branch Policy Guideline 2A reads, in part:

> In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) 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: *Baumann v. Aarti Investments Ltd.,* 2018 BCSC 636.
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> 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. 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 (s.32(1)).
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> 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.
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> 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 suggest the landlord is not acting in good faith in a present case.
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> If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
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> 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 other ulterior motive.

I find that the relationship between the Landlord and the Tenants is acrimonious. This is abundantly clear from the testimony presented at the hearing and the documentary evidence submitted. I do not find it necessary to summarize the events that led to the

acrimony, although I think it is important to note that the Tenants contributed to the acrimony, at least to some degree.

I specifically note that the Landlord was respectful towards the Tenants during the hearing. Conversely, it was necessary for me to direct the male Tenant to refrain from calling the Landlord a "liar". I also specifically note that the written communications from the Landlord to the Tenants which have been submitted in evidence appear, for the most part, to be respectful and professional. Conversely, I find that some of the written communications from the Tenants to the Landlord which have been submitted in evidence can be fairly characterized as confrontational.

I find that an acrimonious relationship between a landlord and a tenant does not, in and of itself, establish that any attempt by a landlord to end a tenancy constitutes bad faith. I find that the be particularly true where the Tenants are contributing to the acrimony.

In these circumstances, I find that there was a significant change in the Landlord's personal life that required him to move from his home. It would be illogical, in my view, to conclude that the Landlord cannot end this tenancy because he had an acrimonious relationship with the Tenants when he has a clear need for alternate accommodations. To reach such a conclusion would, in my view, essentially prevent a landlord from ending a tenancy, pursuant to section 49(3) of the *Act*, whenever there is significant conflict between the landlord and the tenant, even if that conflict is not even indirectly related to the landlord's decision to move into the rental unit.

When considering the issue of good faith, I have considered the undisputed evidence that the Landlord has previously served the Tenants with a One Month Notice to End Tenancy for Cause and a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, both of which was set aside at a previous dispute resolution proceeding. My conclusion that the relationship between the Landlord and the Tenants was acrimonious is based, in large part, on the service of these Notices and the information provided at the hearing on January 28, 2020.

Although the Arbitrator granted the Tenants' application to set aside the One Month Notice to End Tenancy for Cause and the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I note that he also concluded that the Landlord had not "contravened the *Act* or tenancy agreement in the issuance of these Notices to End Tenancy". I interpret this to mean, in the context of the entire decision, that even though the Landlord had failed to meet the burdened of proof in regard to ending the tenancy pursuant to sections 46 or 47 of the *Act*, the Landlord was not acting unreasonably

when he served the One Month Notice to End Tenancy for Cause and/or the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

As has been previously stated however, I cannot conclude that the Two Month Notice to End Tenancy for Landlord's Use was served primarily because of the acrimony and because the Landlord did not succeed in ending the tenancy on the basis of the One Month Notice to End Tenancy for Cause or the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. Rather, I am satisfied the Two Month Notice to End Tenancy for Landlord's Use was served because of the significant change in the Landlord's personal circumstances.

When considering the issue of good faith, I have considered the undisputed evidence that this tenancy was the subject of a previous dispute resolution proceeding in November of 2019. In that decision a Residential Tenancy Branch Arbitrator concluded that the Tenants had failed to establish that the Landlord has not provided and maintained the residential property in a manner that complies with health, safety and housing standards required by law, and the Arbitrator dismissed the Tenants' application for an Order requiring the Landlord to clean the rental unit and to retain the services of an air "scrubber".

Although the hearing from November of 2019 is yet another example of the acrimony between the parties, I find it does not establish bad faith on the part of the Landlord. I find that it does not establish bad faith, in large part, because it does not in any way suggest that the Landlord is attempting to end this tenancy because he is attempting to avoid his legal responsibility to maintain the rental property.

In adjudicating this matter, I have placed little weight on the Tenants' submission that the Landlord threatened to evict them, in an email dated March 02, 2020, if they continued to raise the issue with fibreglass/air quality in the rental unit. I find it was reasonable for the Landlord to send the Tenants written notice that they should refrain from continuing to argue about the issue with air quality in the rental unit, given that that issue had been considered, and dismissed, in a previous dispute resolution proceeding.

I find that the Landlord's email of March 02, 2020 should not be characterized as a threat. Rather, I find that the Landlord acted reasonably and responsibly when he informed the Tenants, in writing, that continuing to raise issues that have already been decided could be grounds to end the tenancy. I find it entirely likely that the Landlord would have grounds to end the tenancy if the Tenants repeatedly raised this issue.

In adjudicating this matter, I have placed little weight on the Tenants' submission that the Landlord was seeking to find ways to evict them because he contacted their neighbour to ask if the Tenants had been smoking. I find the Landlord has the right to ensure his rental property is not being damaged and I make no negative inference from the email the Landlord sent to the neighbour on March 13, 2020, in which he inquired about smoking.

I am satisfied that the Landlord has established that the primary reason for ending this tenancy is that he wishes to live in the rental unit and that he intends, in good faith, to move into the rental unit. I therefore find that the Landlord has established that he has grounds to end this tenancy in accordance with section 49(3) of the *Act* and I

dismiss the Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use that is the subject of these proceedings.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the fee for filing this Application for Dispute Resolution.

On the basis of the Two Month Notice to End Tenancy for Landlord's Use that was submitted in evidence, I find that it complies with section 52 of the *Act*. In reaching this conclusion I have placed no weight on the Tenants' submission that the Landlord did not sign this document.

I placed no weight on the Tenants' submission that the Landlord did not sign the Two Month Notice to End Tenancy for Landlord's Use, in large part, because there is no credible evidence to refute the Landlord's submission that he signed the document. Although I accept that the Landlord's signature looks decidedly different on several documents submitted in evidence, I am not prepared to conclude that the Landlord did not sign the Two Month Notice to End Tenancy for Landlord's Use with credible evidence from a handwriting expert.

Section 55(1) of the *Act r*equires me to grant a landlord an Order of Possession if I dismiss a tenant's application to dispute a notice to end tenancy that complies with section 52 of the *Act*. As I have dismissed the Tenants' application to cancel this Two Month Notice to End Tenancy for Landlord's Use, and that Notice complies with section 52 of the *Act*, I must grant the Landlord and Order of Possession.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective **at 1:00 p.m. on July 31, 2020.**

It is my understanding that due to the current health crisis in British Columbia, the Supreme Court of British Columba is not enforcing most Orders of Possession. This does not affect the validity of this Order of Possession. In the event the Tenants are able to safely move out of the rental unit during this health crisis by the effective date of this Order of Possession, the Tenants should do so. The effective date of this Order is intended to provide the Tenants with a reasonable opportunity to safely secure alternate accommodations.

In the event the Tenants do not vacate the rental unit by the effective date of the Order of Possession, the Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court whenever that Court deems it appropriate.

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 29, 2020

Residential Tenancy Branch