Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, RR, PSF, LRE, LAT, OLC, CNL, MNRT, FFT

Introduction

In this dispute, the tenant sought various relief under the *Residential Tenancy Act* (the "Act"). The tenant filed an application for dispute resolution on July 14, 2020 and a dispute resolution hearing was held, by teleconference, on August 21, 2020. At the hearing, the tenant and the landlord's son, the agent, attended and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Preliminary Issue: Dismissal of Claims Unrelated to Two Month Notice

Rule 2.3 of the *Rules of Procedure,* under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenants' application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim, which is the tenant's dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The most important matter that must be dealt with is determining whether this tenancy will continue.

While the tenant is at liberty to file a new application regarding all matters unrelated to the notice to end tenancy, in this application those matters will be dismissed with leave to reapply.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy began “six or seven years ago,” according to the landlord’s son (the “agent”).

The agent testified that on June 30, 2020, he served the Notice on the tenant’s door, and a copy by way of email. A copy of the Notice was submitted into evidence. Page one of the Notice indicated that the tenancy would end on September 1, 2020. The Notice was signed by the agent.

Page two of the Notice indicated two reasons for the tenancy ending. The first was that the rental unit will be occupied by the landlord’s close family member, and below that it indicated that the “close family member” is the child. Also checked off is the box for the ground that the “landlord is a family corporation” and a close family who owns shares in the family corporation intends to occupy the rental unit. I asked the agent why two boxes were checked, and he indicated that it is just the first box that is application. He testified that he “needs to move in there [the rental unit] and take care of my dad.” His father (the landlord) is 80 and has “health issues.” His intent, he reiterated, is to move into the rental unit.

The tenant testified that the father is not 80 but is 79. The tenant spoke of the landlord’s son making life difficult for her, and apparently the son remarking “I’ll make your life a living hell.” The tenant argued that the reason the landlord (and, presumably the son) want the tenant to go is so that they can do repairs to the roof of the rental unit. As for the son helping, the tenant testified that the “son in question has never helped the father.” She said that the son “is on a war path” and is “playing dirty.” The tenant also spoke about the various other issues with the property.

In rebuttal, the agent stated that “lots of the stuff [the tenant testified about] is fabricated and straight up” untrue. He reiterated that his father just recently got out of the hospital and has mental and physical health issues that require the son to be nearby the father. The father has a brain injury and “he’s not capable of taking care of himself.” He then remarked that the tenant does not respect boundaries between her and the landlord,

and that unfortunately the son has had to step in. He said that he is “sorry that we’re ruining her little fantasy,” and is not impressed with the tenant’s “trolloping around the property during a frickin’ pandemic.” (The agent said “trollop,” though he probably meant “traipsing.”) In summary, the agent testified that his father is too scared to assert whatever issues there are and that the father is on his own, hence the son’s need to occupy the rental unit.

While the parties testified about other issues, primarily with repairs and about a garden that seems to be a point of contention, I will not reproduce this testimony further as it is unrelated to the primary issue to be determined in this decision.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49(3) of the Act states that a landlord may end a tenancy when

> A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

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.

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 Act or the tenancy agreement. 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.

In this dispute, the tenant took issue with the landlord's son's remarks about helping the father. She stated that the son has never in the past helped the father. However, and this is critical, she did not outright dispute that the son was going to help the father. Moreover, she acknowledged that the landlord has a head injury and is developing (or has) dementia. The tenant spoke about the landlord's son's remarks about making her life a living hell, but there is no evidence of the son's behavior or remarks or comments proving that this is the case.

Ultimately, the tenant has presented no evidence that the agent has any ulterior motives in issuing the Notice. The son testified that he intends to occupy the rental unit. The tenant has not provided any evidence to suggest that the son intends not to occupy the rental unit in good faith.

For these reasons, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord's agent has proven that he intends to occupy the rental unit and that he has no other ulterior motive. As such, I dismiss the tenant's application for an order canceling the Notice.

Section 55(1) of the Act states that

> 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
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> (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.

I have reviewed the Notice and find that it complies with section 52 of the Act. Further, as noted above, I have dismissed the tenant's application and have upheld the Notice. Therefore, pursuant to section 55(1) of the Act I grant the landlord an order of possession.

Finally, the landlord and his son should note the tenant's right to significant compensation under section 51(2) of the Act should the landlord's son not occupy the rental unit for a period of at least six months.

In addition, pursuant to section 51(1) of the Act, the tenant is now entitled to an amount that is the equivalent of one month's rent payable under the tenancy agreement. The tenant and landlord's agent should review section 51 of the Act for further guidance regarding this compensation.

Conclusion

The tenant's application is dismissed, without leave to reapply. (Except for the unrelated matters as noted above, which are dismissed with leave to reapply.)

I grant the landlord an order of possession, which must be served on the tenant and which is effective seven (7) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 25, 2020

Residential Tenancy Branch