Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent real estate service
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act)*, I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49 of the Act; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62 of the Act.

Both parties attended the hearing. The landlord was assisted by agent MF. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the application and evidence submitted in person by the tenant on August 18, 2020 and that she had enough time to review the material. I find the landlord was served the tenant's application and evidence in accordance with sections 88 and 89 of the Act.

The tenant confirmed receipt of the landlord's evidence on August 30, 2020 and that on August 24 or 25, 2020 she received an email from the tenant informing her that the evidence package was served. The landlord affirmed she slid the evidence under the tenant's front door. At first the landlord's agent stated the evidence was served on August 24, 2020, and later the landlord corrected the date to August 21, 2020. The landlord also said the evidence was served on August 21, 2020. A photograph was submitted into evidence showing the evidence package was put under the door on August 21, 2020.

I find that sliding the package containing the response evidence under the tenant's door combined with emailing the tenant to inform the evidence was served is sufficient service, pursuant to section 71(2)(c) of the Act. Pursuant section 90 (c) of the Act, the tenant is deemed served three days later, on August 24, 2020.

Preliminary Issue – Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the cancellation of the Notice and the continuation of this tenancy is not sufficiently related to the tenant's other claim to warrant that they be heard together.

The tenant's other claim is unrelated in that its basis rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss the other tenant's claim with leave to reapply.

Issue to be Decided

- Is the tenant entitled to cancellation of the Notice?
- If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in June 2017. Rent is $1,950.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of $975.00 was collected and the landlord still holds it in trust.

Both parties also agreed the Notice was received on July 27, 2020. This application was filed on July 27, 2020.

A copy of the Notice was provided. The Notice is dated June 27, 2020 and the effective date is September 30, 2020. The reason to end the tenancy is: the landlord will occupy the rental unit.

The parties have been involved in previous arbitrations. In December 2019 the tenant informed the landlord the rental unit needs repairs. On July 13, 2020 the landlord was ordered through arbitration to repair the rental unit. On August 10, 2020 the landlord was ordered to pay the tenant the amount of $4,650.00 for compensation due to the reduction in the value of the tenancy (the two previous arbitration file numbers are referenced on the cover page of this decision)

The tenant affirmed the landlord informed her that she could not afford the repairs the rental unit needs. The landlord provided evidence the repairs are being conducted. An email from a contractor to the landlord on August 20, 2020 was submitted into evidence. It states:

> Once I know the delivery date of the material from the flooring team I can provide a more comprehensive schedule.
> All appointments for flooring and for ourselves will be booked with the tenant so she will be kept in the loop and up to date.

The landlord affirmed she is going to sell her AT home because of financial hardship. An email indicating the property assessment was received on August 12, 2020 (submitted into evidence). The AT property will be listed in the next few days. In 2018 the landlord sold another property due to financial hardship.

The landlord affirmed she requires medical treatment and this is one of the reasons she needs to occupy the rental unit. The landlord affirmed she moved to British Columbia in 2013 and has been attending the same family doctor located in NE since that year, the family doctor's clinic is just a five-minute drive from the NE rental unit. In 2016 the landlord suffered a car accident and she has underlying medical conditions since then. The landlord lives in AT and will be undergoing medical treatment in VC as a consequence of the car accident in 2016. This medical program will require frequent appointments.

On August 12, 2020 the landlord's medical doctor stated:

> Due to her medical conditions, I am in agreement with her that the best place for her to reside is in NE where she already has a home, as it is proximal to her necessary health services including my office practice.

The landlord stated the medical doctor's notice was electronically signed because the landlord had an online appointment with her medical doctor due to Covid19.

The tenant affirmed the landlord's testimony about her medical history was vague and inquired why the medical condition was not brought up earlier. The landlord affirmed she visited two medical specialists in November 2019 and April 2020 to confirm a medical diagnosis. The landlord was then referred to a third specialist and it takes time for diagnosis to come forward. The landlord emphasized her right to privacy and that the tenant does not need to be aware of details of her medical condition.

The landlord works in another province, but her home is in AT. The landlord submitted into evidence her British Columbia driver's license and health care card. When the landlord is working outside the province she rents a temporary accommodation. The tenant stated the landlord spends most of her time in another province.

Currently the landlord drives up to ten hours from the city she works to reach an airport and then flies home to AT. When the landlord moves to NE she will be able to fly from the city she works non stop to VE and this will make her commute easier.

The tenant affirmed the landlord has other properties she could occupy. Besides the two properties in British Columbia, the landlord also owns property in another province. The landlord's husband owns a property in NE. The landlord and her husband have separate finances and the landlord affirmed she could not occupy her husband's rental unit because it is already occupied by her sister-in-law.

The tenant affirmed the landlord is acting in bad faith and the notice is retaliation for the previous arbitrations. The landlord reiterated she is acting in good faith and the reasons why she needs to live in the NE rental unit are purely financial and medical.

Analysis

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. Section 49(8) also allows the tenant to challenge the Notice within 15 days. As the Notice was served on July 27, 2020 and the tenant filed on the same date, the tenant had filed this application in time to dispute the Notice.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states the landlord must demonstrate that she plans to occupy the rental unit for at least 6 months and that she has no ulterior motive for issuing the Notice.

Residential Tenancy Branch Policy Guideline 12 states:

> 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.

In Gallupe v. Birch, 1998 CanLII 1339, the British Columbia Supreme Court states:

> [35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

The landlord provided testimony she is facing financial hardship and that she needs to sell the property which she is currently residing because of financial hardship. The tenant also stated that the landlord informed her she is having financial hardship and can not afford the repairs the rental unit needs.

Based on the parties testimony and the August 20, 2020 email, I find the landlord has taken action to comply with the repair order previously issued. The landlord has demonstrated compliance with the arbitration decisions and is not avoiding her obligations under the Act.

The tenant stated the landlord is acting in bad faith as a retaliation for the two previous arbitrations. I find the two previous arbitrations are not motive or purpose to affect the honesty of the landlord’s intention to occupy the rental unit due to financial hardship.

Based on the testimony provided by both parties, I find the landlord has met the onus to prove, on a balance of probabilities, she intends, in good faith, to occupy the rental unit due to financial hardship. The Notice is confirmed.

The evidence about financial hardship is enough to confirm the Notice and I decline to consider any other reasons.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy and the tenant's application is dismissed, I must consider if the landlord is entitled to an order of possession.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession. As the effective date of the Notice is September 30, 2020, the order of possession should be effective on September 30, 2020.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

For the purpose of educating the landlord, I note that under section 05 of Ministerial Order M195, effective on June 24, 2020, landlords can not increase rent while M195 is in effect.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective on September 30, 2020. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia. The order of possession should be served immediately.

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: September 03, 2020