Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Residential Tenancy Act* (the *Act*) on March 3, 2022, seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice);
- An order for the Landlord to comply with the *Act*, regulation, and/or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on June 16, 2022, at 9:30 A.M. (Pacific Time), and was attended by the Tenant and the Landlord, both of whom provided was affirmed. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and both parties acknowledged receipt of each other's documentary evidence. Based on the above, and as neither party raised concerns with regards to the dates or methods of service for the above noted documents, the hearing therefore proceeded as scheduled and the documentary evidence before me from both parties was accepted for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that met that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses listed in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

Preliminary Matter #2

The Landlord was having connectivity issues and as a result, disconnected and reconnected numerous times throughout the hearing. When the Landlord was disconnected, I did not accept evidence or testimony for consideration from the Tenant and awaited the return of the Landlord to the teleconference.

Preliminary Matter #3

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the claim for an order for the Landlord to comply with the *Act*, regulation, and/or the tenancy agreement are not sufficiently related to the Two Month Notice, I exercise my discretion to dismiss that claim with leave to reapply. This is not an extension of any statutory time limit.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the Two Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

If not, is the Landlord entitled to an Order of Possession under section 55(1) of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on May 1, 2014, at a monthly rental rate of $650.00, that rent is due on the first day of each month, and that a security deposit in the amount of $325.00 is required. At the hearing the parties agreed that the tenancy is still periodic and that rent in the amount of $691.25 is currently due each month.

The parties agreed that the Two Month Notice was posted to the door of the rental unit on February 23, 2022, and the Tenant stated that they received it off their door that same day. The Tenant filed the Application seeking to dispute the Two Month Notice the following day on March 3, 2022. The Two Month Notice in the documentary evidence before me is on the 2021 version of the form, is signed and dated February 21, 2022, has an effective date of May 1, 2022, and states that the reason for the issuance of the Two Month Notice is because the rental unit will be occupied by the Landlord or the Landlord's close family member. Further to this, the Landlord checked the box indicating that the father or mother of the Landlord or the Landlord's spouse would be the person occupying the rental unit.

The parties disputed whether the Two Month Notice was valid and whether it had been issued in good faith. The Tenant argued that the Landlord was attempting to "renovict" them due to the low amount of rent they pay, as they had done to other occupants of the building, and that the Two Month Notice stating that their close family member would be occupying the rental unit had been served to avoid obligations under section 49.2 of the *Act*. The Landlord disagreed stating that they had served the Two Month Notice in good faith as their mother-in-law, who has a limited budget, already rents a rental unit from them but that it is in an unsafe area. As a result, the Landlord argued

that they are planning to move her to this rental unit. When the Tenant pointed out that there are other available/vacant rental units in the building, the Landlord stated that they are not comparable in size or location and would therefore not be suitable.

The Landlord denied that they are attempting to “renovict” the Tenant, stating that they recently added laundry facilities to the building and completed $50,000.00+ in repairs to the building and have not increased the rent as they just wanted to provide more amenities and a better experience for tenants. The Landlord also stated that they are a real estate investor and typically purchase properties in poor repair so that they may repair and then re-rent them. As a result, the Landlord stated that they are doing ongoing renovations and repairs to the suites and building over time and pointed to documents in the evidence before me regarding costs incurred for renovations or repairs and future renovation and repair plans, such as photographs, invoices, estimates, and text messages.

The Tenant provided what they stated is an accurate reproduction of text messages between themselves and the Landlord. One of these text messages from the Landlord on February 16, 2022, states that they are planning to extensively renovate the building and the Tenant’s rental unit and would rather enter into a mutual agreement to end the tenancy, rather than serve and enforce a notice to end tenancy for this purpose, as then they would be required to wait two months to start the renovations. The Landlord then proposed that the tenancy end on April 1, 2022, and that the Tenant be paid $3,000.00 in compensation. The text message reproductions show that on February 20, 2022, the Tenant advised the Landlord that they were considering their options and not ready to make a decision regarding the mutual agreement, followed by a reply from the Landlord offering to increase the compensation to $5,000.00 or proceed with the issuance of a notice to end tenancy.

The text message reproductions show that on February 23, 2022, the Landlord stated that the renovations they will be doing to the building will be gradual over time and that they will be moving their mother into the rental unit and issuing a 60-day notice to end tenancy for this purpose.

Analysis

I find that there is a direct and significant conflict in the reasons given to the Tenant by the Landlord on February 16, 2022, for why they wished to end the tenancy, and the subsequent reason given by the Landlord for wanting to end the tenancy on and after

February 23, 2022. The original text message reproduction which the Landlord acknowledged receiving and did not dispute, contains a text message on February 16, 2022, which clearly demonstrates that the Landlord advised the Tenant on that date that they planned to expediently and extensively renovate both the building and the Tenant's rental unit, even going as far as to state that they "would like to get in ASAP to start these renovations".

According to the Tenant and the text message reproductions, which I find to be accurate and reliable, the Landlord made no mention of wanting to use the rental unit for a close family member until after the Tenant had failed to accept the two offers made by the Landlord to enter into a mutual agreement to end the tenancy. Further to this, the Landlord stated at the hearing that they are a real estate investor and typically purchase properties in poor repair so that they may repair and then re-rent them. The text message reproductions demonstrate to my satisfaction that the Landlord believed at the time these text messages were sent, that they could simply issue a Two Month Notice to End Tenancy for Landlord's Use of Property for the purpose of completing renovations, if the Tenant did not want to enter into a mutual agreement to end the tenancy. However, a legislative amendment which took affect on July 1, 2021, now requires that landlords who wish to end a tenancy for renovations or repairs, file an application for dispute resolution with the Branch seeking an Order of Possession for this purpose. Section 49.2 of the *Act* states that a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all the following apply:

> (a)the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
>
> (b)the renovations or repairs require the rental unit to be vacant;
>
> (c)the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
>
> (d)the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

Section 49.2(2) also states that in the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

The Tenant argued at the hearing that to avoid having to obtain the required permits and make an application for dispute resolution seeking an Order of Possession for renovations, the Landlord chose to simply issue a different notice to end tenancy for a different purpose, and I am inclined to agree. There was no documentary or other evidence before me from the close family member that the Landlord alleged would be moving in and as set out above, I find that the reason given to the Tenant on February 16, 2022, for ending the tenancy (extensive renovations to both the rental unit and building), is markedly different than the reason given to the Tenant on February 23, 2022, (occupancy by a close family member), both in purpose and the level of complexity required in order to obtain an Order of Possession for that purpose. Further to this, I find it more than simply coincidental that the Landlord made no mention of wanting the unit for a close family member until after the Tenant failed to accept either of their two offers for a mutual agreement to end the tenancy so that they could renovate the rental unit. Finally, the Text messages on February 16, 2022, and February 20, 2022, satisfy me on a balance of probabilities that the Landlord believed at that time that they could simply issue a Two Month Notice to End Tenancy for the purpose of completing renovations, something that was not permissible under the *Act* at that time but was previously allowable prior to a July 1, 2021, legislative amendment. As a result, I find it more likely than not that when the Tenant failed to accept their offers to end the tenancy by way of mutual agreement, the Landlord then issued the Two Month Notice before me for consideration to circumvent the requirements set out under section 49.2 of the *Act.* Pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #2b, good faith means a landlord:

- Is acting honestly;
- Intends to do what they say they are going to do;
- Is not trying to defraud or deceive the tenant;
- Does not have an ulterior purpose for ending the tenancy, and
- Is not trying to avoid obligations under the RTA, the MHPTA, or the tenancy agreement.

Based on the above, I therefore find that the Landlord was not acting in good faith when they served the Two Month Notice stating that their close family member would be occupying the rental unit, as I am satisfied as set out above that the primary reason for issuance of the Two Month Notice was to avoid obligations under section 49.2 of the *Act,* regardless of whether the Landlord's mother-in-law might also be planning to occupy the rental unit at some point.

Based on the above, I therefore grant the Tenant's Application seeking cancellation of the Two Month Notice and I order that the tenancy continue in full force and affect until it is ended in accordance with the *Act.*

As the Tenant was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a) of the *Act*, the Tenant is therefore permitted to deduct $100.00 from the next month's rent payable under the tenancy agreement, or to otherwise recover this amount from the Landlord.

Conclusion

I grant the Tenant's Application seeking cancellation of the Two Month Notice as I am satisfied that it was not issued in good faith, and I order that the tenancy continue in full force and affect until it is ended in accordance with the *Act.*

I also grant the Tenant recovery of the $100.00 filing fee pursuant to section 72(1) of the *Act*, which they are permitted to deduct from the next month's rent payable under the tenancy agreement, pursuant to section 72(2)(a) of the *Act*, or to otherwise recover this amount from the Landlord.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that this decision was issued more than 30 days after the close of the proceedings.

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: July 23, 2022

Residential Tenancy Branch