Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the Residential Tenancy Act (the "Act") in which the Tenant seeks an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 24, 2022 ("2 Month Notice") pursuant to section 49 of the Act.

The Landlords' agent ("AW"), the Tenant and the Tenant's advocate (SF") attended this hearing. The other Landlord ("RP") did not attend the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Residential Tenancy Branch Rules of Procedure ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

LM stated he served the Notice of Dispute Resolution and his evidence ("NDRP Package") on each of the Landlords by registered mail but he could not recall the date of mailing. AW acknowledged each of the Landlords received the NDRP Package not less than 14 days before this hearing. I find the NDRP Package was served on each of the Landlords pursuant to the provisions of sections 88 and 89 of the Act.

Although the Tenant could not recollect serving further evidence on the Landlords, AW acknowledged each of the two Landlords received additional evidence from the Tenant by registered mail not less than 14 days before this hearing. I find the Tenant served additional evidence on the Landlords pursuant to the provisions of section 88 of the Act.

AW stated the Landlords served their evidence on the Tenant by registered mail on September 6, 2022. AW provided the Canada Post tracking number for service of the Landlords' evidence on the Tenant to corroborate her testimony. I find the Landlords' evidence was served on the Tenant pursuant to the provisions of section 88 of the Act.

Preliminary Matter – Amendment to Rental Address and Tenant's Address

At the outset of the hearing, I inquired about the address of the rental unit. The Tenant stated the civic address of the rental unit changed since the commencement of the tenancy. AW and Tenant agreed the rental address and the Tenant's address are now different from that stated in the tenancy agreement. The Tenant requested, and AW consented, to a request by the Tenant that the rental address and the Tenant's address be amended in the Application.

Rules 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

AW consented to the Tenant's request for an amendment to the application to stated the current civic address for the rental unit and the Tenant's address. As such, I order the Application to be amended to state the correct address for the rental address and the Tenant's address.

Issues to be Decided

Is the Tenant entitled to cancellation of the 2 Month Notice?
If the Tenant is not entitled to cancellation of the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

AW and the Tenant submitted copies of the tenancy agreement into evidence. The tenancy agreement states the tenancy commenced on February 1, 2013, on a month-to-month basis, with rent of $800.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of $400.00 to the Landlord. The AW acknowledged the Landlord received the security deposit from the Tenant and the Landlord was holding it in trust for the Tenant. The parties agreed the rent was now $959.40 per month. AW stated there are no rental arrears owing by the Tenant.

AW stated the 2 Month Notice was served on the Tenant by registered mail on June 24, 2022. AW provided the Canada Post tracking number for service of the 2 Month Notice to corroborate her testimony. The Tenant acknowledged he received the 2 Month Notice. I find the Tenant was served with the 2 Month Notice in accordance with the provisions of section 88 of the Act.

AW stated RP was the owner of several rental properties throughout the city including the rental unit. AW stated RP and his wife have managed their own rental properties during the past ten years or so. AW stated RP and his wife have become concerned regarding their personal safety during the past year. AW stated RP and his wife have become particularly concerned after a recent dispute resolution proceeding involving an eviction of another tenant that escalated. I have not provided details on the particulars of that situation as they could identify the parties to this dispute resolution and the details are not relevant in reaching my decision. AW stated that RP used his home address as the address for service for RP on tenancy agreements previously entered into with his other tenants. AW stated RP and his wife believe that it would be better for RP to use a different address for rental agreements with future tenants and for several other businesses he operates.AW stated RP wanted to use the address of the rental unit for this purpose. When I asked, AW stated RP and his wife have no current intention to move from their current address to the rental address but rather to use the rental unit as “office space”. AW stated that RP felt the Tenant has been a good tenant and, should I grant an Order of Possession to the Landlord, RP is willing to give the Tenant until February 28, 2022 to vacate the rental unit.

SF argued that the service of the 2 Month Notice on the Tenant was inappropriate as RP was seeking to use the rental unit primarily for business purposes and not for residential purposes. SP submitted a copy of the municipal RS-1 District zoning bylaw and stated the zoning for the residential property in which the rental unit is located, does not permit business activities. The Tenant, who spoke favourably of the Landlord, stated had no reason to believe RP or his wife would be using the rental unit for residential accommodations.

Analysis

Sections 49(1), 49(2), 49(3), subsection 49(6)(f) and section 49(8) of the Act state in part:

49(1) In this section:

[…]

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii)holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

[…]

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[…]

(3) 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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

[…]

(f) *convert the rental unit to a non-residential use.*

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The 2 Month Notice was served on the Tenant by registered mail on June 24, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 2 Month Notice on June 29, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or by July 14, 2022. The records of the Residential Tenancy Branch disclose the Tenant filed the Application to dispute the 2 Month Notice on June 29, 2022. As such, I find the Tenant filed the Application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

Residential Tenancy Policy Guideline 2A ("PG 2A") provides guidance for landlords considering ending a tenancy pursuant to section 49 of the Act. Under the heading PG 2A states in part:

> **C. OCCUPYING THE RENTAL UNIT**
>
> Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). *Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose."* (See for example: *Schuld v. Niu,* 2019 BCSC 949) *The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.*
>
> [emphasis in italics added]

AW stated the Landlord intended to use the rental unit for office space and to use the address of the rental unit as the address for tenancy agreements with future tenants. AW testified that, at the time the 2 Month Notice was served, neither the Landlord nor his spouse, had plans to vacate their current living accommodations nor did they have any intentions to occupy the rental unit for residential purposes after the tenancy ended with the Tenant.

In *Schuld v. Niu,* 2019 BCSC 949 ("Schuld"), which is referenced in PG 2A, the BC Supreme Court considered a judicial review of an arbitrator's decision, in which a landlord ended a tenancy on the basis that the landlord would occupy the rental unit, then proceeded to leave it vacant with the intention to later demolish the rental unit. In that case, the court wrote:

> [17] *In my view, the word "occupy" as used ins. 49(3) must be read in the context of the statute and, bearing in mind statutory objectives, it is clear to me that the specific purpose of these sections is to limit the circumstances in which a landlord may give a Notice to End Tenancy [citation omitted].* There are two separate circumstances. One scenario is where the landlord intends to occupy the rental unit as a residence for his own purposes; the other scenario is where the landlord intends to demolish the rental unit to construct something different. *The arbitrator has chosen*

> *to expand the definition of the word "occupy" in s. 49(3) so that it encompasses and takes within it, therefore, ss. (6), which is the subsection relating to demolishing the rental unit. In my respectful view, that deprives ss. (6) of practically all meaning.* The result would be that landlords could give notice under s. 49(3) even ifs. 49(3) is not applicable, but s. 49(6) is applicable.
>
> [18] The key difference, of course, is that a notice under *s. 49(6) cannot be given until the landlord has all the necessary permits and approvals required by law* and, of course, also intends to demolish the unit. Those circumstances that would underlie the ending of a tenancy under s. 49(6) were not in place even by the time the Residential Tenancy Branch hearing took place before the arbitrator, and, as far as I have been given to understand, on the hearing of this petition, still not taken place. So the petitioner's complaint that he could have remained in the premises for quite a bit longer than he did seems on the surface, at least, to be valid. However, it is not my place to express an opinion on the underlying merits of the issue before the arbitrator.
>
> [emphasis in italics added]

In *Schuld,* the court found the arbitrator's interpretation of the word "occupy" to be "patently unreasonable" and set the arbitrator's decision aside. Applying *Schuld* to the case at hand, I find that RP's intention to occupy the rental unit for "office space" does not satisfy the legislative intent of section 49(3) of the Act that the Landlord or his spouse will occupy the rental unit for residential purposes. To consider RP's proposed use of the rental unit for office space pursuant to section 49(3) of the Act would render section 49(6) of the Act meaningless, as it would allow any landlord who wants to end a residential tenancy for the purpose converting the rental unit to a non-residential use to avoid the more stringent requirements proscribed by section 49(6) of the Act. As such, I find the Landlord's intent to use the rental unit for office space after the tenancy ends does not fall under the definition of "occupy" for the purposes of section 49(3) of the Act. Based on the foregoing, I find the Landlord has not satisfied, on a balance of probabilities, that the 2 Month Notice was issued for a valid reason. I order the 2 Month Notice to be cancelled. The tenancy continues until it is ended in accordance with the provisions of the Act.

Conclusion

The 2 Month Notice is cancelled. The tenancy continues until it is ended in accordance with the provisions of the Act.

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: November 16, 2022

Residential Tenancy Branch