Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding RIVERVIEW APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the "*Act*") to cancel a Four-Month Notice to End Tenancy for Demolition, or Conversion to Another Use, (the "Notice") dated August 31, 2022, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord, the Landlord's spouse, and their Legal Counsel (the "Landlord") as well as the Tenant and their Legal Counsel (the "Tenant") attended the hearing and were reminded that their affirmation from the previous proceedings carried forward to today's proceedings. The parties agreed that they exchanged the documentary evidence that I have before me.

The parties were also reminded that, in a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires that the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice dated August 31, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of 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 Landlord testified that the Notice was served on August 31, 2022, by posting it on the front door of the rental unit. The Notice indicated that the Tenant was required to vacate the rental unit as of December 31, 2022. The reason checked off by the Landlord within the Notice was as follows:

- *Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.*

The Landlord submitted that it is their intent to convert the Tenant's rental unit to a caretaker unit. The Landlord testified that due to their age and several pre-existing injuries, they need to hire a caretaker for this rental unit as they are no longer able to keep up with the demands of running this rental property on their own. The Landlord testified that they own several rental properties, with a total of 39 residential units and five commercial units, and that it is their intent to hire caretakers at several of these buildings. The Landlord submitted three documents into documentary evidence, consisting of an employment/tenancy agreement, a BC Supreme Court personal injury judgment and a medical report.

The Landlord testified that they had a different caretaker hired in September 2022, when they issued the Notice, but due to the length of time they had to wait for these proceedings that person had to find other employment. The Landlord testified that they secured a new caretaker as of 23 January 2023. The Landlord submitted a letter from the first caretaker into documentary evidence.

The Tenant submitted that the real reason the Landlord is ending their tenancy is that the Landlord is seeking to collect more rent for this rental unit. The Tenant submitted that the Landlord has a regular (annual) habit of verbally asking renters to agree to a rent increase above the allowable amount and that they had refused the last request by the Landlord. The Tenant testified that they and several other renters issued a joint letter to the Landlord formally requesting that the Landlord stop making verbal requests for rent increases to them. The Tenant submitted a copy of this letter into documentary evidence.

The Landlord testified that they agreed that do verbally attempt to negotiate rent increases with their renters, but that the Act allows for that and that they never issue a rent increase over the allowable amount.

Additionally, the Tenant testified that the Landlord's comments made in a text message to them on July 13, 2022, show that the Landlord would also consider issuing them a two-month notice to end tenancy for the landlord's personal use of the property. The Tenant submitted that this text message shows the Landlord was willing to use any means to end their tenancy. The Tenant submitted 37 pages of text message transcripts into documentary evidence.

The Landlord testified that, they did send this text message but that they were just communicating that they could issue the other notice, which was shorter, but that they were being open and honest in their intent to convert the rental unit.

Finally, the Tenant submitted that there were other units in the rental property that the Landlord could use as a caretaker unit. The Tenant testified that two other renters had volunteered to vacate their units so the Tenant could remain in their rental unit. The Tenant submitted 6 pages of text messages from third parties into documentary evidence.

The Landlord testified that they had received two offers, via text message, from other renters, offering their units as a caretaker unit but that these other renters never provided the Landlord with formal written notice to end their tenancies and confirmed that these other renters are still residing in their respective rental units.

The Landlord testified that they had specifically chosen the Tenant's rental unit as their caretaker unit of choice due to its reduced size, compared to the other units, as well as this unit's location in the building. The Landlord submitted that the Tenant's unit has a clear view of the parking and garbage collection area for the building, which made this unit a preferred choice. The Landlord testified that they have had security issues in the back area of the building, where the parking and garbage collection areas are located, and that they need the new caretaker to have the ability to see this area from their unit.

The Landlord also testified that given the amount of pay they are legally required to pay the new caretaker; they will be making less money on this rental unit once it is converted to a caretaker unit.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony provided by the Landlord, that they served the Notice by posting it to the front door of the Tenant's rental unit on August 31, 2022. Pursuant to section 90 of the *Act*, I find that the Tenant was deemed to have received the Landlord Notice to end the tenancy on September 3, 2023, three days after it was posted to the front door of the rental unit.

Section 49(8) of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 30 days of receiving the Notice. Accordingly, the Tenant had until October 3, 2022, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on September 27, 2022, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2B address the "good faith requirement" as follows:

GOOD FAITH

"In Gichuru v. Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or 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 (section32(1) of the RTA).

> In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result in a finding of bad faith: Steeves v. Oak Bay Marina Ltd., 2008 BCSC 1371.
>
> If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.
>
> If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case."

I have reviewed all of the documentary evidence before me, from both the Tenant and the Landlord, and I find that the Landlord has provided sufficient evidence to prove to my satisfaction, that they will be using this rental unit for the stated purpose on their Notice, which is to a caretaker's suite.

Specifically, I note the Landlord's employment contract and tenancy agreement signed between them and a new caretaker, which records that the caretaker will be moving into this rental unit as soon as it becomes available. Additionally, I noted that this agreement shows that the Landlord will be collecting less rent for this rental unit as a result of the conversion to a caretaker suit, not more rent as claimed by the Tenant.

I also accept the Landlord's testimony supported by their documentary evidence that shows that due to the Landlord's age, and their existing injuries, that there is a physical requirement for the Landlord to reduce their personal workload.

Furthermore, I have reviewed the text messages history submitted into evidence by the Tenant and find that these messages depict a Landlord with a history of promptly responding to building repair requests, but that this prompt response has recently become delayed due to personal issues and the declining health of the Landlord. This further supports to the Landlord's claim that they require a building caretaker to keep up with repairs and renter concerns on this rental property.

I acknowledge the Tenant's submission that the Landlord could have ended a different renter's tenancy to house the new caretaker. However, I accept the explanation offered

by the Landlord, that in their opinion, the Tenant's rental unit was the best unit to house the new caretaker as it was smaller than the other units in the rental building, making it less desirable to potential renters, and that it offers a clear view of the back parking area, an area in which there have been security issues. Additionally, a landlord has a right to select any rental unit they deem most appropriate to house a caretaker.

Overall, I find that there is insufficient evidence before me to show that the Landlord has an ulterior motive to end this tenancy. To the contrary, I find that the Landlord had provided sufficient evidence to show that they intend to use the rental unit for the stated purpose on their Notice.

Therefore, I accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice dated August 31, 2022.

Section 55(1) of the *Act* states the follow:

> ***Order of possession for the landlord***
>
> ***55 (1)*** *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*
>
> *(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 to end the tenancy, and I find the Notice complies with section 52 of the *Act* and that the Landlord is entitled to an order of possession.

At the end of these proceedings, the Tenant's Counsel requested that, if the Tenant's claim to cancel the Notice fails, that consideration be given to the effective date of the order of possession. The Residential Tenancy Policy Guideline 54 address effective dates on orders of possession, stating the following:

> **B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION**
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> "An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an

arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
    - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
    - e.g., If the tenant provides evidence of a disability or a chronic health condition."

I have reviewed the totality of the documentary evidence and submission made during these proceedings and noted that no evidence or testimony was offered, by either party, as to the start date of this tenancy nor has there been any testimony that the Tenant has a disability or a chronic health condition, that would make it unreasonable to vacate the property in the usual two-day period. However, I do find that on a balance of probabilities, the Tenant has paid the rent for the month of February 2023. Therefore, I find that it is reasonable that this tenancy should end on the date in which the rent for this tenancy has been paid.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on February 28, 2023**. The Tenant must be served with this Order. 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.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on February 28, 2023**. The Tenant must be served with this Order. 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.

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: February 24, 2023

Residential Tenancy Branch