Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, RR, PSF, FFT

Introduction

On October 14, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking the provision of services and facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenants L.M. and O.J. attended the hearing, and both Landlords attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

L.M. advised that they only served one Notice of Hearing package, and some evidence, to the Landlords by email on November 7, 2022. He stated that they received consent to serve documents by email on November 7, 2022. Landlord D.C. confirmed that this package was received, that they consented to exchange documents by email, and that they were prepared to proceed despite only receiving one Notice of Hearing package contrary to Rule 3.1. of the Rules of Procedure (the "Rules") and despite being served this singular package late, and not in accordance with Rule 3.1. of the Rules. Given this,

I am satisfied that the Landlords were duly served the Tenants' Notice of Hearing package, and some evidence.

L.M. then advised that additional evidence was served to the Landlords by email on February 5, 2023, and D.C. confirmed that this was received as well. As the Tenants' evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules, I have accepted all of their evidence and will consider it when rendering this Decision.

D.C. advised that their evidence was served to the Tenants by email on January 22, February 16, and February 18, 2023, but the February 18, 2023, package pertained to a different file. L.M. confirmed that they received the January 22 and February 16, 2023, packages, but did not receive the February 18, 2023 evidence. Based on this testimony, and as this February 18, 2023 evidence was served late, contrary to the timeframe requirements of Rule 3.15 of the Rules, I have only accepted and will consider the Landlords' evidence served on January 22 and February 16, 2023, when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with

the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy originally started with the previous owners on August 1, 2021, and that the Landlords inherited this tenancy when they purchased the rental unit on June 30, 2022. The tenancy agreement is currently a month-to-month tenancy. Rent was established at $1,650.00 per month and was due on the first day of each month. A security deposit of $775.00 and a pet damage deposit of $500.00 were also paid. A copy of the signed tenancy agreement was entered into evidence for consideration.

As well, the parties also agreed that the Notice was served by email to the Tenants on October 2, 2022. The Landlords checked off the reason for service of the Notice as “The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse)”. Moreover, the Landlords checked off the box indicating that “The father or mother of the landlord or landlord’s spouse” would be the specific person that would be occupying the rental unit. The effective end date of the tenancy was noted as January 1, 2023, on the Notice.

D.C. advised that his mother-in-law had lived with them prior to the purchase of the rental unit, and that their plan was always to have her move into the rental unit at some point in time. He testified that they initially made the decision to allow for the Tenants to stay in the rental unit, and stated that they had a conversation with the Tenants at the outset to make them aware that they could stay as long as possible. However, the

Landlords could not promise occupancy until the end of April 2023, as they might require possession of the rental unit back, for the mother-in-law's use, prior to that.

He testified that on the day that they were moving in, the mother-in-law suffered from a medical emergency, causing their plans to change. He stated that she suffers from rheumatoid arthritis, that her eyesight diminished dramatically, that her bedroom is currently on the third floor, and that the stairs pose a danger to her. He referenced documentary evidence submitted to support their submissions regarding her health.

Landlord E.M. advised that they were overly optimistic that her mother would be able to live comfortably with them when they purchased the property, and that the plan of having her live with them was mutually beneficial as the rental unit would help supplement the mortgage. However, she testified that her mother's eyesight rapidly deteriorated, that there is a long waitlist for cataract surgery, and that the stairs will become an increasing danger. She stated that it was their initial wish to have her mother occupy the rental unit when they purchased the property, but it was not financially viable at the time.

L.M. acknowledged that the mother-in-law would likely move into the rental unit, and he confirmed that, on or around early July 2022, the Landlords brought up the possibility that the mother-in-law might need to move into the rental unit by April 2023, or potentially earlier. Despite this, it is their position that they do not believe that the Notice was served in good faith. He advised that the Landlords proposed an amendment to the tenancy agreement, on September 19, 2022, that they wanted the Tenants to sign. He stated that they offered the Landlords a compromise to the amendment on October 1, 2022; however, the Landlords did not agree to it, but instead served the Notice approximately 15 minutes later. He submitted that it does not make sense why an amendment was offered if the Landlords were simply going to end the tenancy with the Notice.

Moreover, the Landlords did not indicate in any of their evidence of a change in the mother-in-law's health condition between September to October 2022 that would demonstrate a deterioration in health that necessitated occupancy of the rental unit. Furthermore, he testified that the Landlords' noted in the October 2, 2022, email that the mother-in-law would require occupancy "as soon as possible". However, there was no evidence of any health concerns that afflicted the mother-in-law, nor were there any "unforeseen circumstances" that occurred between the refusal of the Landlords'

amendment and service of the Notice. This would further point to the Notice being served as retaliation for not agreeing to the Landlords' amendment.

He then referred to previous Decisions of the Residential Tenancy Branch regarding other files that dealt with the matter of good faith; however, the Tenants did not submit the entire Decisions for consideration, but only provided small, limited excerpts from these Decisions. He also referenced pictures, submitted as documentary evidence, to illustrate the layout of the rental unit. Given the number of steps and the cramped design of the bathroom, he noted that it would be difficult for the mother-in-law to navigate the rental unit. As well, he cited a psychiatrist's letter, submitted by the Landlords, where it mentioned a plan to renovate the rental unit.

O.J. re-iterated that it is their position that the Landlords served the Notice in retaliation. As well, she requested that if the Landlords are granted an Order of Possession, that an extension of time, under Sections 55 and 68 of the *Act*, be considered so that they had adequate time to give up vacant possession of the rental unit.

The parties were provided with an opportunity to settle the matters themselves; however, these discussions were not successful. The Landlords were then canvassed for their position on the Tenants' request for an extension of time in the event that they are awarded an Order of Possession. Given that so much time had elapsed since service of the Notice and the effective end date of the tenancy, and as the Tenants already had sufficient time to find alternate accommodations, they rejected this request and sought an Order of Possession after two days.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy in respect of a rental unit where the Landlords or a close family member of the Landlords intend in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the

effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlords' reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlords, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlords are permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states the following:

> In Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that a claim of 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.
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> 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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 32(1).

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and submissions before me, I do find the timing of service of the Notice to be somewhat suspicious. Given that the Landlords appeared to be of the mind during the hearing, that they could impose an amendment to the tenancy agreement on the Tenants, with the expectation that the Tenants agree to it, this does cause me to ponder whether the Notice was served in retaliation when it was not accepted.

However, the consistent and undisputed evidence before me is that the Landlords had a conversation early on with the Tenants, and informed them that the mother-in-law would require use of the rental unit sometime in the future. Moreover, I accept that the Landlords' living accommodation has many steep stairs. Given that the optometrist's eye examination summary for the mother-in-law indicated that she saw this professional in August 2022, and that it was determined that her "depth perception and night vision is quite affected, where going up and down stairs [is] very challenging" due to "visually significant cataracts", I accept that this condition affected the mother-in-law prior to service of the Notice.

While I acknowledge the Tenants' reference to past Decisions of the Residential Tenancy Branch, I note that they have not submitted those Decisions in their entirety for my review, but have only chosen to select specific excerpts, which only support their position in isolation. Regardless, even if these full Decisions were provided, I note that these would be instructive, not prescriptive, and that I am not bound to follow these Decisions, in any event.

Furthermore, I recognize the Tenants' submissions supporting their position that it is their belief that the Notice was not served in good faith, and I do appreciate their perspective of this. However, given that the Landlords advised the Tenants, very early on, that the mother-in-law would require the rental unit at some point in the relatively near future, I accept that this was always their intention. Moreover, even though it is not entirely clear when the degradation in the mother-in-law's eyesight started, I accept that it was present in August 2022, which was prior to service of the Notice, and that this presented her with additional challenges of living with the Landlords.

Based on a review of the evidence before me, while the Tenants have raised some points that warrant consideration, I am satisfied that the Landlords, more likely than not, served the Notice in good faith. As I find that the Landlords have adequately justified service of the Two Month Notice to End Tenancy for Landlord's Use of Property of October 2, 2022, and as the Notice was served in accordance with Section 88 of the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. Given that the original effective date of the Notice was January 1, 2023, and that the Landlords were not prepared to extend the date of possession, I find that the Landlords are entitled to an Order of Possession that takes effect after **two days**. The Landlords will be given a formal Order of Possession which must be served on the Tenants.

As a note, despite the Tenants' submissions that the layout of the rental unit is not adequate for the mother-in-law to occupy, given that an Order of Possession has been granted, it will now be up to the Landlords to use the property for the stated purpose on the Notice. Should the Landlords not comply and use the property for an alternate or dual purpose, the Tenants may apply for the appropriate compensation under Section 51 of the *Act*, and it would up to the Arbitrator at the designated hearing to determine if the Landlords complied with the *Act*.

As the Tenants were not successful in this Application, I do not find that the Tenants are entitled to recover the filing fee for their Application.

Conclusion

I dismiss the Tenants' Application in full. The Landlords are provided with a formal copy of an Order of Possession effective **two days** after service on the Tenants. Should the Tenants or any occupant on the premises 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: March 1, 2023

Residential Tenancy Branch