Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL-MT, OLC, FFT

Introduction

On February 22, 2023, 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 more time to dispute the Notice pursuant to Section 66 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. Both Landlords attended the hearing as well, with P.O. attending as counsel for the Landlords. 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, with the exception of P.O., provided a solemn affirmation.

Tenant K.S. advised that they served a separate Notice of Hearing and evidence package to each Landlord by registered mail on or around February 7, 2023. Landlord K.C. confirmed that these packages were received. Based on this solemnly affirmed testimony, I am satisfied that the Landlords were duly served the Tenants' Notice of Hearing and evidence packages. As the Tenants' evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted all of their evidence and will consider it when rendering this Decision.

P.O. advised that the Landlords' evidence was served to the Tenants by registered mail on May 30, 2023, and K.S. confirmed that they received this evidence. Based on this solemnly affirmed testimony, as this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted all of their evidence

and will consider it 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?
- Are the Tenants entitled to more time 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 most recent tenancy agreement started on June 15, 2021, that the tenancy agreement is currently a month-to-month tenancy, that rent is established at $3,552.50 per month, and that it is due on the fifteenth day of each month. A security deposit of $1,750.00 and a pet damage deposit of $250.00 were also paid. A copy of the signed tenancy agreement was entered into evidence for consideration.

As well, the parties also agreed that a signed copy of the Notice was served by email to

the Tenants on or around February 5, 2023. 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 landlord or the landlord’s spouse” would be the specific persons that would be occupying the rental unit. The effective end date of the tenancy was noted as May 2, 2023, on the Notice. A copy of the Notice was submitted by the Landlords for consideration.

With respect to the Tenants’ request for more time to dispute the Notice, given that K.S. acknowledged that he received the Notice on February 8, 2023, it is clear that this Notice was disputed within the legislated timeframe. As such, there is no need to consider the Tenants’ request for more time to dispute the Notice.

K.S. did raise the concern that this Notice was served to him by email, when there was no prior consent to serve documents in this manner. In addition, he insisted that, under the *Act*, this Notice must be served by registered mail, and that it must also be served to the co-tenant as well. He was informed that the *Act* does not stipulate that a notice to end tenancy must be served by registered mail only; however, despite this information, he continued to repeat the same submission throughout the hearing. He was informed that this position was noted, and he was asked to refrain from repeating this constantly as it was wasting the hearing time. As well, he was also already informed of the service requirements of documents pursuant to Section 88 of the *Act*. Regardless, K.S. apparently did not understand this information and this request. He was also advised that it is not a requirement under the *Act* for a notice to end tenancy to be served to all tenants on a tenancy agreement.

Regarding his opposition to being served this Notice by email, he was invited to make submissions on why this method of service was prejudicial to them. He would proceed to reiterate his previous statements, even though he was reminded that those were already documented. Given that he would repeatedly echo the same statements, and in an effort not to waste any more hearing time, he was provided a final opportunity to offer something new; however, there was nothing different provided. Given that K.S. clearly received this Notice on February 8, 2023, given that he disputed the Notice, and given that there is evidence that he has responded multiple times to the Landlords by email, I find that K.S. has provided no tangible or compelling reasons for how service in this manner prejudiced them.

P.O. referred to the affidavit of Landlord K.C. where it indicated that the Landlords contract in another location had ended in January 2023, and that they planned to move back into the rental unit. As such, the Notice was served in February 2023. She referenced documents confirming that the Landlords’ contract had ended, that they had listed their house for sale, that their kids had been registered in school near the rental unit, and that the Landlords had obtained a quote for a moving company. She cited email communications from K.S. confirming that he acknowledged the Notice was

served in good faith; however, the effective date of the Notice did not work for him due to his own personal circumstances.

K.S. advised that it was his intention to stay in the rental unit long term and that the Landlords "hinted" that the tenancy could last for a duration of five years. He pointed to the likely illegal yearly rent increase proposal in the addendum to support this suggestion. He acknowledged that the Landlords wanted the rental unit back for their own use. After being afforded multiple opportunities to do so, he did not make any direct submissions with respect to the Landlords not using the property for the stated purpose. However, due to his own personal circumstances, he indicated that he would not be able to move until it was convenient for him.

Substantial efforts were made to settle this matter; however, these attempts were ultimately unsuccessful.

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, the consistent evidence is that the Landlords' intention is to occupy the rental unit, and they have clearly demonstrated their efforts to do so with a significant amount of documentary evidence that reliably corroborates this intention. Moreover, the Tenants have not made any specific submissions to dispute this intention, and it is evident that the only reason the Notice was disputed was because the effective date of the Notice did not work for their personal circumstances.

As K.S.'s submissions were primarily based on hardship, and a belief that his own principals differed from that of the Landlords' regarding timing of the Notice in consideration of his own personal convenience, I note that these are not factors that pertain to the validity of the reason the Notice was served. As such, I do not find that there is any evidence before me that would cause me to question the Landlords' intention to use the property for the stated purpose.

Based on a review of the evidence before me, 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 dated February 2, 2023, 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 May 2, 2023, 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 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: June 14, 2023

Residential Tenancy Branch