Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

On February 22, 2023, the Tenant 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*).

The Tenant attended the hearing, with A.M. attending as an advocate for the Tenant. The Landlord attended the hearing as well, with A.C. attending as an agent for the Landlord. 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.

A.M. advised that the Notice of Hearing package was served to the Landlord by registered mail on March 2, 2023, and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package.

A.M. then advised that the Tenant's evidence was served to the Landlord by registered mail on May 26 and May 30, 2023, and the Landlord confirmed that he received these packages as well. Based on this undisputed testimony, I am satisfied that the Tenant's evidence was served in accordance with the timeframe requirements of Rule 3.14 of the

Rules of Procedure (the "Rules"). As such, this evidence was accepted and considered when rendering this Decision.

The Landlord advised that his evidence was served to the Tenant by hand on May 29, 2023, and the Tenant confirmed receipt of this evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules. As such, this evidence was accepted and considered when rendering this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

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 current tenancy agreement started on October 1, 2019, that rent was established at an amount of $911.00 per month, and that it was due on the

first day of each month. A security deposit of $422.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

A.C. advised that the Notice was served to the Tenant by hand on February 13, 2023, and the Tenant clearly received this as it was indicated as such on the Application. The reason the Landlord served the Notice is because "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)." As well, the Landlord indicated that it would be "The landlord or landlord's spouse" that would specifically be occupying the rental unit. The effective end date of the tenancy was noted as April 30, 2023, on the Notice.

He then referenced documentary evidence from July 2017 where the Landlord applied to develop the building from 13 suites down to 10. As such, he advised that it is the Landlord's intention to move into rental unit and join it with an adjoining unit. However, he testified that in order to do so, the unit that the Landlord is currently living in in the building must be vacated first, so it can then be decommissioned in order to facilitate the approval of the variance permit to reduce the number of units in the building. He stated that once the rental unit is vacant, significant renovations must be completed to the rental unit before the Landlord can move in. He testified that it would take approximately 30 days to complete these renovations and the rental unit will be uninhabitable during this time period.

A.M. asked the Landlord if they had any documentary evidence to prove that it would only take 30 days to conduct renovations to the rental unit, and A.C. responded that this was only an "estimation" based on previous experience. She then referenced a *Committee of the Whole Report* and a *Housing Agreement* between the Landlord and the city which demonstrate that the Landlord illegally converted the building in 2017, and there was an agreement struck where the Landlord would only be permitted to use the building as a rental property. As well, the Landlord was not permitted to live there. However, this agreement was breached as the Landlord currently lives in the building. She reiterated that the Landlord has submitted no documentary evidence to support his intention to occupy the rental unit. In addition, she referenced a previous Decision where the Landlord attempted to end the tenancy with the illegal use of a vacate clause (the relevant file number is noted on the first page of this Decision). She submitted that these all demonstrate the Landlord's dubious character and his efforts to attempt to end the tenancy in bad faith.

The Tenant advised that the Landlord's daughter gave him two, different reasons for attempting to end the tenancy. One was due to the city and the other was due to the Landlord wanting to move into the rental unit. He stated that a for sale sign was posted after the Notice was served, and this is contradictory to his intent to move into the rental unit.

A.C. advised that the Landlord listed the building for sale on an as-is basis to test the market, and the response was "dismal". With respect to the previous Decision, he stated that the Landlord was unaware that the *Act* changed regarding the use of vacate clauses. Regarding the *Housing Agreement*, he testified that this will not come into effect until the variance permit is approved, but this permit cannot be approved until the Landlord first moves from his own unit and has that unit decommissioned, which will take approximately seven to eight months. He stated that the Landlord does not intend to live in the rental unit after the variance permit is approved.

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 Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the 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.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, 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 Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

> "The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith… 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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."

When reviewing the totality of the evidence and testimony before me, I find it important to note that A.C. confirmed that the Landlord's intention was to move into the rental unit because it was his desire to have the variance permit approved, and the only way to do so was to vacate his own unit first in order to have it decommissioned. In my view, this demonstrates a clear ulterior motive in serving the Notice as it is not his intent to occupy the rental unit for any other reason other than to initiate the process of obtaining approval of the variance permit. In addition, given that A.C. testified that the Landlord has no intention of living in the rental unit after all these issues are completed, I find that this further reinforces a reasonable conclusion that the Landlord did not serve this Notice for a true intention to occupy.

Moreover, A.C. indicated that in order for the Landlord to occupy the rental unit, substantial renovations needed to be completed, which would render the rental unit uninhabitable, and would allegedly take approximately 30 days to complete. However, when A.C. was advised that there was a different process that the Landlord must apply for under the *Act* if the Landlord needed vacant possession of the rental unit for substantial renovations, he then contradictorily attempted to walk back this testimony by downplaying the significance of the renovations. I found A.C.'s contradictory and inconsistent testimony to be dubious, and that this clearly demonstrated that the Landlord would not be occupying the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice. I find neither the Landlord, nor A.C., to be credible in any respect.

Based on my assessment of the evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord served this Notice in good faith. As such, I find that the Notice dated February 7, 2023, is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 7, 2023, to be cancelled and of no force or effect.

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 19, 2023

Residential Tenancy Branch