Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

On May 5, 2023, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 49.2 of the *Residential Tenancy Act* (the "*Act*").

Landlord S.S. attended the hearing, with N.P. attending as counsel for the Landlords. Both Tenants attended the hearing as well, with J.D. attending as counsel for the Tenants. 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 N.P. and J.D., provided a solemn affirmation.

Service of the Notice of Hearing and evidence packages was discussed, and there were no issues concerning service. As such, I have accepted all of the parties' evidence and will consider it 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 submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession under Section 49.2 of the *Act*?

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 on October 1, 2020, with a different landlord, and that the Landlords inherited this tenancy after purchasing the rental unit in late 2021. Rent was currently established at an amount of $1,397.50 per month and was due on the first day of each month. A security deposit of $795.00 and a pet damage deposit of $250.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

In the Application, the Landlords were asked to describe the renovations and why vacant possession is required. The Landlords provided the following written submission:

> On October 14, 2022, the Landlord received a letter from the Town of View Royal indicating that the secondary suite is not in compliance with the Secondary Suite Bylaw No 601, 2007. The Town required that the Landlord either bring the suite up to code (financially impossible) or decommission it. Therefore, renovations are required to decommission the suite. **[Reproduced exactly as written]**

N.P. advised that the Landlords purchased the property in late 2021 with the understanding that the entire property would be vacant. He stated that they moved into the upper portion of the property on February 5, 2022, and that they did not know that the rental unit was an illegal suite. He noted that the Landlords were unsuccessful in a previous Dispute Resolution hearing.

He submitted that an anonymous person filed a complaint with the municipality on August 4, 2022, and a by-law officer inspected the rental unit on September 29, 2022. On October 14, 2022, he stated that the Landlords received a letter informing them that they would either have to obtain a permit for the rental unit, or make a building permit

application to decommission the rental unit. He indicated that the Landlords served a notice to end tenancy due to this and were unsuccessful.

He noted that the Landlords received an estimate to bring the rental unit up to code on October 12, 2022, and this would cost $57,617.70. However, the Landlords could not afford to do this, so they applied for a permit to decommission the rental unit instead. He stated that the permit is valid until December 9, 2023, and that the Landlords would be fined $100.00 per day by the municipality if the rental unit was not decommissioned by then. He referenced a previous Decision dated March 1, 2023, where the Arbitrator indicated that Section 49.2 of the *Act* may apply for this matter.

He advised that this situation meets the criteria of Section 49.2 because the Landlords have the necessary permit to decommission the rental unit, and that this Application was made in good faith because the Landlords will be fined if they do not decommission it. As well, he noted that the rental unit does not meet current building code so it is unsafe for habitation, that the renovations consist of removing everything in the rental unit in order to decommission it, that the Tenants would not be able to live there during this process, and that no rental unit would exist afterwards. He referenced the documentary evidence submitted to support the Landlords' position in this Application.

He then indicated that another Two Month Notice to End Tenancy for Landlord's Use of Property was served on May 11, 2023, because the Landlords need the rental unit for their daughter. He submitted that this notice was served because there was no guarantee that the Landlords would be successful in this Application.

J.D. questioned the Landlords' good faith intention when making this Application as the Landlords have already been unsuccessful on two other previous Dispute Resolution proceedings pertaining to two, separate Two Month Notices to End Tenancy for Landlord's Use of Property. He stated that the Landlords were determined on both occasions not to have served these previous notices in good faith, and it is impossible to take their word for it now. He noted that the Landlords have now attempted to evict the Tenants five, different times since they purchased the property, which speaks to the Landlords' bad faith.

He submitted that other permits are likely necessary in order to complete the decommissioning of the rental unit. As well, he noted that the Landlords' plan to remove the rental unit altogether is contrary to prolonging or sustaining the use of the rental unit. He referenced the Landlords' decommissioning estimate submitted, and noted that

there was no contact information included where this contractor could be questioned. He cited the previous Decisions of the Residential Tenancy Branch involving these parties, that were submitted as documentary evidence, to support the Tenants' position that the Landlords have been continually acting in bad faith (the relevant file numbers are noted on the first page of this Decision).

N.P. advised that the only permit required to decommission the rental unit is the one that was obtained already. He submitted that an assessment of the Landlords' credibility is not required as their good faith was established by the requirement to comply with the municipality. He noted that the decommissioning of the illegal rental unit will prolong and sustain the use of the entire property.

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 49.2 (1) of the *Act*, under which the Landlords make this Application, states:

> *Subject to Section 51.4 [tenant's compensation: section 49.2 order], a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:*
>
> > *(a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;*
> >
> > *(b) the renovations or repairs require the rental unit to be vacant;*
> >
> > *(c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;*
> >
> > *(d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.*

I find it important to note that the Landlords must provide evidence to prove each of the above-cited four elements. As well, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may 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.

After reviewing the totality of the evidence before me, I refer the Policy Guideline #2B, which states that "If an arbitrator is satisfied that all of these criteria are met, then they must grant an order ending the tenancy and issue an order of possession. Such an order must not end the tenancy earlier than 4 months after the date it was made." As the first criteria pertains to the Landlords' good faith intention, this must be weighed and considered when rendering this Decision.

Given my review of the two, previous Decisions regarding disputes over two, separate Two Month Notices to End Tenancy for Landlord's Use of Property, it was determined in each of those Decisions that the Landlords' intention was to generate revenue, and those two notices were cancelled as the Landlords were found to have issued them in bad faith. In my view, it is clear that the Landlords have been caught in this position because they had not done the necessary research of their rights and responsibilities as Landlords under the *Act*, and have now been exploring every possible avenue in an effort to rectify their missteps.

This lack of research and understanding of the *Act* by the Landlords is reinforced by them purchasing a property without doing the necessary due diligence to determine if the rental unit was illegal or not. It was only well after they purchased the rental unit did they find themselves in the situation where they were forced to make a choice between bringing up the rental unit to current Building Code and making it a legal suite, or decommissioning the rental unit. While they claimed that the amount to bring the rental unit up to Code is too costly, this would have been discovered prior to the purchase of the rental unit had the Landlords conducted the proper due diligence.

As the Landlords' good faith intention has already been determined to be highly suspect multiple times, and as applying to decommission the rental unit was the cheaper alternative, I find it more likely than not that this Application was not made in good faith. I reject N.P.'s submission that the possible fine levied by the municipality is suggestive

of their good faith intention, as this was their choice to pursue the decommissioning route. Suggesting that it is the spectre of having to pay a fine that would be the impetus for their good faith intention further leads to a reasonable conclusion that they did not have a good faith intention initially. Consequently, I am not satisfied by any of their actions during the course of the tenancy that they truly have acted in good faith.

In my view, it is evident that the Landlords are attempting to do everything in their power to end this tenancy, in order to correct the missteps that they have found themselves in in trying to generate revenue with their properties. I find that this is further evidenced by the Landlords serving another Two Month Notice to End Tenancy for Landlord's Use of Property on May 11, 2023. While I acknowledge that this was done as a proactive measure in the event that they are not successful in this Application, I find that this only further supports a reasonable conclusion that the Landlords have put themselves in this unenviable position based on their own misguided actions in an effort to benefit themselves and capitalize financially on their properties.

Ultimately, it is my finding that all of the requirements in Section 49.2 (1) of the *Act* have not been met. As such, the Landlords' Application is dismissed in its entirety.

Conclusion

The Landlords' Application is dismissed without leave to reapply.

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: September 6, 2023

Residential Tenancy Branch