Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910125317: CNL, LRE, FFT
File #910125330: CNL, RP, FFT

Introduction

The present matter concerns two applications brought by tenants in separate tenancies.

The tenant A.H. seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy for Landlord's Use of the Property signed on August 20, 2023 (the "AH Two Month Notice");
- an order pursuant to s. 70 restricting the Landlord's right of entry; and
- return of the filing fee pursuant to s. 72.

The tenants T.K. and P.K. seek the following relief under the *Act*:

- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy for Landlord's Use of the Property signed on August 20, 2023 (the "TK and PK Two Month Notice");
- an order pursuant to ss. 32 and 62 for repairs to the rental unit or residential property; and
- return of the filing fee pursuant to s. 72.

The tenants A.H., T.K., and P.K. attended the hearing. The Landlord J.N. attended the hearing. The Landlord was represented by T.C. as his counsel. V.N. was called as a witness by the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing.

I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Documents

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Joining the Applications and the Claims Made in the Applications

The tenants in this matter sought to have both matters joined given both two-month notices to end tenancy pertain to the Landlord's children taken occupancy of the respective rental units.

Rule 2.10 of the Rules of Procedure permits applications to be joined and heard at the same time to ensure a fair, efficient, and consistent process and sets out the following criteria to be considered in joining applications:

- whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- whether all applications name the same landlord;
- whether the remedies sought in each application are similar; or
- whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

I did not request submissions from the parties on the application of Rule 2.10 and the Landlord raised no objection to having the matters joined. To be clear, I did not request submissions on this point because I accept that though the notices to end tenancy pertain to separate tenancies, the issue of good faith intention of the children to move into the rental units is the same between both notices.

Having said this, the tenants also seek other relief which is not related, namely A.H.'s request restricting the Landlord's right of entry and T.K. and P.K.'s request for repairs to their rental unit.

I also note that Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rule 2.3 of the Rules of Procedure is intended to ensure that matters are dealt with in a timely and efficient manner. This rule also enables parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

The primary issue in the disputes is whether the tenancies will come to an end or not based on the notices to end tenancy. Indeed, should the tenancies end, any claims for repairs or restricting the Landlord's right of entry would be moot.

Given Rules 2.10 and 2.3 of the residential property, I dismiss A.H.'s claim under s. 70 of the *Act* restricting the Landlord's right of entry and T.K. and P.K.'s claim under ss. 32 and 62 of the *Act* for repairs. Depending on whether the tenancies continue or not, these claims will either be dismissed with or without leave to reapply.

The hearing proceeded strictly on the issue of whether the notices to end tenancy were properly issued by the Landlord.

Preliminary Issue – Amending T.K. and P.K. Application

Applicants should list parties in their applications, to the extent necessary and possible, as they are listed in the tenancy agreement. The reason for this is that the *Act* generally limits its applicability to disputes arising from residential tenancies, which means between landlords and tenants who are party to a tenancy agreement.

Counsel in this instance advises that T.K. and P.K. have listed a J.S. on their application as a tenant. Review of the tenancy agreement for T.K. and P.K. confirms that J.S. is not listed as a tenant. To be clear, occupants of a rental unit who are not party to the

tenancy agreement do not have standing to bring disputes to the Residential Tenancy Branch.

Given this issue, I have amended T.K. and P.K.'s application to remove J.S. as a party to the dispute since I accept that they are not a tenant to the tenancy agreement and are merely an occupant of the rental unit.

Issue to be Decided

1) Are the A.H. Two Month Notice and the T.K. and P.K. Two Month Notice enforceable? If so, is the Landlord entitled to an order of possession for the rental units?
2) Are the tenants entitled to the return of their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

I am advised by the parties that the residential property comprises three separate rental units. I am further advised that the two subject rental units are not connected inside the house, such that they have separate entrances. Landlord's counsel advises that the upper rental unit occupied by T.K. and P.K. has 3 bedrooms and the basement rental unit occupied by A.H. has 2 bedrooms.

A.H. advises that he has been living in the rental unit for approximately 10 years and further advises that T.K. and P.K. have been occupying their rental unit for approximately 12 years.

I am provided with copies of the respective tenancy agreements. A.H. indicates that the Landlord took ownership of the property in 2017 and signed updated tenancy agreements with the tenants in 2019 or 2020.

1) ***Are the A.H. Two Month Notice and the T.K. and P.K. Two Month Notice enforceable? If so, is the Landlord entitled to an order of possession for the rental units?***

A landlord may end a tenancy under s. 49(3) of the *Act* if the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(1) of the *Act* defines a close family member as an individual's parents, spouse, or child or the parent or child of that individual's spouse.

When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8). If disputed, the respondent landlord bears the burden of proving the notice was issued in good faith.

The Landlord advises that both the AH Two Month Notice and TK and PK Two Month Notice were served to the respective parties by way of registered mail sent on August 20, 2023. The tenants do not recall when they specifically received the notices but acknowledge receiving them in late August 2023. I find that the AH Two Month Notice and TK and PK Two Month Notice were served in accordance with s. 88 of the *Act* and received in late August 2023.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that both applications were filed on September 4, 2023. Given when the applications were filed and when the notices were sent via registered mail, I find that the tenants filed their applications disputing the notices within the 15 days permitted under s. 49(8) of the *Act*.

As per s. 49(7) of the *Act*, all notices issued under s. 49 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the AH Two Month Notice and TK and PK Two Month Notice and find that they comply with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-32).

Both notices to end tenancy list that they were issued on the basis that the Landlord's children would be occupying the rental units.

Landlord's counsel advised that the Landlord's two daughters, N.G. and V.G., intend to move into the rental unit. The Landlord confirms his daughters live at home with V.G.

testifying that she lives within her childhood bedroom. I am advised that the Landlord's daughters wish to have more independence. The Landlord also advises that he and his spouse intend to downsize their home, which they cannot given that their adult children still live at home.

V.G. testified that she is currently 25 years old, completed her undergraduate recently, and obtained her CPA designation about four months ago. I am told that she has a partner of four years and is looking for privacy and independence. V.G. testified to having some level of embarrassment from living in her childhood bedroom.

V.G. says that she works from home at times, which has been a challenge since her parents also work from home resulting in competition to find suitable workspace. She says that given her work there are confidential client files at her place, which competes for space with her parent's confidential files. V.G. says it is hard to socialize at her place given the current living arrangements. V.G. also says that she needs additional space to set up a gym within the basement rental unit.

According to V.G., the residential property is ideally situated between her parents' home and her office downtown for when she goes into the office. She says that given the cost of rent around the residential property, she could not otherwise afford to pay rent if she does not move into the rental unit. I am told that V.G. intended to move into the rental units in November 2023, but that that plan has been delayed due to the present application. V.G. says that she plans to reside in the rental unit for the foreseeable future.

The Landlord's daughter, N.G., provided an affidavit. N.G. says that she is currently in her first year of law school in New York but that she intends to reside at the residential property with her sister when she is back in Vancouver visiting family. N.G. says that she intends to return to Vancouver when she is finished law school in two years time.

The tenant A.H. raises issue with that two rental units are to be occupied by two individuals. The tenant A.H. argued that N.G. still has two years left in her studies, such that she cannot be put forward as an individual to live in the rental unit given the occupancy requirements.

The tenants argued that the residential property was in a state of disrepair, with T.K. testifying that he reported a leak in the tub surround of his rental unit in early August 2023. On cross-examination, A.H. asked whether the Landlord intended to complete some upgrades before his daughters moved in. The Landlord says that he had no such

plans arguing that the issues raised by the Tenants are largely tied to cleanliness, which can be easily addressed.

Landlord's counsel argued that the Landlord is not motivated by rent payments here and simply wants to take back the rental units for his daughters. I am advised by the Landlord that he did not impose maximum rent increases over the course of the tenancies. The tenants did not dispute this, though argued that was due to the Landlord not issuing the notices of rent increase as required.

The tenant A.H. has provided a copy of a draft settlement agreement. I enquired whether the Landlord was asserting settlement privilege to the document in the tenant's evidence. Landlord's counsel says they were not and, in fact, directed me to a recital which provided that the Landlord was to payout repair costs of $21,500.00 to A.H. as a payout to end his tenancy. The parties advise that the settlement agreement was not finalized or signed. Counsel argued, however, that the recital demonstrates that the Landlord is not motivated by money here.

The Landlord's evidence contains photographs of his current home. The photographs show a room full of files, another room filed with file boxes, another with workout equipment surrounded by children items, and a storage room filed to the roof with boxes.

In this instance, I found the explanation provided by V.G. to be compelling, namely that she is living in circumstances that have proven to be untenable given her age and stage of life. I accept that living and working in the same home with her parents has proven to be challenging and that she has a degree of embarrassment from living in her childhood room. Given the photographs provided by the Landlord, I accept that the space requirements for all the family members exceeds that which is available at their current home.

The tenants argue, understandably under the circumstances, that it makes little sense to displace tenants and occupants from two rental units for the one daughter with another one not residing there frequently over the next two years. Though I accept the argument to be understandable, it is based on a question of whether it is fair for a landlord to displace tenants for the personal use of their property. To be clear, s. 49 of the *Act* does not care whether notice to end tenancy for landlord's use of the property is fair, merely that there be a good faith intention to occupy the space for personal use.

In this instance, I accept that V.G. does require space for a home office and home gym and accept that having a separate space from her living space is entirely rational. The fact that the rental units are disjoined is, so to speak, an explanation for why the separate suite is needed for the home office.

I further accept that N.G., though not filling the occupancy requirement given she primarily resides in New York, will be residing with V.G. at the residential property when she is in Vancouver. I accept that the Landlord intends on downsizing, which is not currently possible since his children's belongings are in his house. Given this, I further accept that N.G.'s belongings will be moved into the rental unit, thus explaining the need for additional space.

The tenants argue that the residential property needs significant repairs, with the tenant T.K. arguing that the timing of the Two Month Notice coincides with the repair request made for the tub surround. The evidence provided by T.K. and P.K. includes photographs of the tub surround. Though they do not argue it directly, I accept that they were arguing the Landlord has an ulterior motive in issuing the notices to end tenancy.

The Landlord's evidence does include correspondence between he and T.K. in which the tenant reports a repair issue with the tiles in the bathroom on August 1, 2023. The Landlord responds that he can "come by in about 30 minutes". The Landlord's evidence includes a quote from a repairperson dated August 24, 2023 outlining various repair options for the tub surround.

The Landlord's evidence also contains text messages in which he tells T.K. on September 17, 2023 that "after measuring and seeing the tiles yesterday we discussed we will need to replace them rather than just caulk them". In subsequent correspondence, the Landlord asks T.K. on September 19, 2023 if he wanted temporary repairs, with T.K. responding "[w]e aren't too concerned about it at this point since we won't be around much longer".

I find that there is no ulterior motive here. To be certain, the tub surround does appear to be in need of repair, a point acknowledged by the Landlord in his correspondence with the T.K.. However, the wheels were in motion, so to speak, for having the issue addressed both prior to T.K. and P.K. receiving their notice to end tenancy and after it was served. The repair process stopped after T.K. says they were not concerned given the tenancy would be ending soon. In other words, it does not appear that Landlord is attempting to avoid his obligation to maintain and repair the residential property under s. 32 of the *Act* by issuing the notice to end tenancy.

Given the above, I find that the Landlord has demonstrated the good faith intention of V.G. to move into the rental unit. I further find that there is no ulterior motive on the part of the Landlord.

Given this, I dismiss the tenants' claims disputing the two notices to end tenancy without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession for both rental units.

Prior to concluding the hearing, I requested submissions on the effective date of the order of possession if it were to be granted. I did so in consideration of Policy Guideline #54, which provides guidance on determining the effective date of an order of possession. As noted with Policy Guideline #54, generally an order of possession is effective two days after it is issued when the effective date of a notice to end tenancy has passed, which is the case here.

A.H. submitted that he is in poor health and requires sufficient time to find alternate accommodation. It was highlighted by him that both are long-term tenancies. T.K. argued that it is a challenging rental market. A.H. requested that the order of possession be effective on December 31, 2024.

The Landlord indicated he was agreeable to an order of possession effective on February 28, 2024.

I am cognizant that the *Act* merely sets a two month notice requirement, which expired on October 31, 2023. I also accept that these are long-term tenancies, and that A.H.'s health requires that he have additional time to find other accommodation.

I find that setting an effective date for the orders of possession as December 31, 2024 would be unreasonable. The notices to end tenancy had an effective date of October 31, 2023, which complied with the minimum notice required under the *Act* and has now since passed.

I do, however, accept that the tenants, in particular A.H., do require additional time. I find that the Landlord's offer, being February 28, 2024, is more than reasonable under the circumstances. Indeed, his offer to end the tenancies at the end of February 2024

exceeds what I would have ordered had he not put forward that date considering the circumstances here.

I note that 2024 is a leap year, a point that I accept was likely missed by the Landlord. Given this, I grant the Landlord orders of possession for the rental units effective at 1:00 PM on February 29, 2024.

2) Are the tenants entitled to the return of their filing fee?

The tenants were unsuccessful. I find they are not entitled to their filing fee. Both claims under s. 72 of the *Act* are dismissed without leave to reapply.

Conclusion

I dismiss the claims to cancel the A.H. Two Month Notice and the T.K. and P.K. Two Month Notice, without leave to reapply.

I grant the Landlord an order of possession effective at **1:00 PM on February 29, 2024**.

I dismiss the claims for the filing fees, without leave to reapply.

As the tenancy will be ending shortly, I dismiss the severed claims under ss. 32 and 62 and s. 70 of the *Act* without leave to reapply.

It is the Landlord's obligation to serve the orders of possession on the tenant. Should the tenants or other occupants in the rental unit not comply with the orders of possession, they may be enforced by the Landlord at the BC Supreme Court.

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: December 08, 2023

Residential Tenancy Branch