



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, ERP, O, RP, OPC, OPL, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant(s) under the *Residential Tenancy Act* (“the *Act*”). The landlord applied for:

- an Order of Possession for cause or landlord’s use pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant(s) applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (“the 1 Month Notice”) pursuant to section 47;
- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (“the 2 Month Notice”) pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other parties Application for Dispute Resolution with Notice of Hearing. The tenant confirmed receipt of the two notices to end tenancy: the 1 Month Notice and the 2 Month Notice.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

Should the landlord's 2 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to make repairs or emergency repairs to the rental unit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on March 1, 2014 with a rental amount of \$1300.00 payable on the first of each month. The rental amount is currently \$1332.50. The landlord confirmed that she continues to hold a \$650.00 security deposit and a \$650.00 pet damage deposit paid by the tenant(s) on February 27, 2014.

The tenant testified that on April 30, 2015, her adult son was served with a 1 Month Notice to End Tenancy. She testified that this notice was received later the same evening after she had refused to move her car out of a (controversial) parking spot. The tenant testified that on May 6, 2015, her adult son was served with a 2 Month Notice to End Tenancy. That tenant testified that, while she is aware that the landlord's husband is ill and does not dispute the severity of his illness, she does not believe that the landlord is issuing the 2 Month Notice to End Tenancy in good faith. She testified that she does not believe that a relative of the landlord is in fact moving into the rental unit.

The landlord sought an Order of Possession. The landlord testified that the provision of the 1 Month Notice to End Tenancy was based on the actions of the tenant and the impact on herself and her husband. She testified that, between April 30, 2015 and May 6, 2015, her husband became significantly more ill. She testified that she issued the 2 Month Notice to allow the tenant to be aware of all the circumstances and to receive the tenants' benefits of a 2 Month Notice.

The landlord submitted three pages of documentary evidence in making her application. She submitted her own written statement, repeated in her sworn testimony that, "My husband's daughter and granddaughter re moving into the suite so that his daughter can help with the care of her father." The landlord submitted a letter dated May 26, 2015 from her husband's daughter. The signed letter states in part that the daughter will be moving into the basements suite to help with the care of her father. The landlord also submitted a letter from a doctor of oncology that describes the landlord's husband's

diagnosis and prognosis. The third page of the landlord's submission is a letter from the landlord stating, "My husband's daughter and granddaughter re moving into the suite so that his daughter can help with the care of her father."

The landlord testified that, as the landlord and upstairs neighbour, she and her husband are regularly disturbed by the tenants. She testified that they are loud, they slam the doors and often, the tenant's daughter will yell and swear at her in relation to parking disputes. The tenant testified that no one in her family slams doors and while her daughter has spoken in anger to the landlord on occasion, there are a variety of circumstances that have affected the parking disputes.

Finally, the landlord claims that the tenant's daughter is residing in the unit but that she is not on the rental agreement. She provided some evidence in testimony that the daughter showers and does her laundry at the residence. The tenant testified that her daughter is a young student and comes over to visit often but does not reside in the unit.

Analysis

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49(3) that a landlord "may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." Under the Act, a "close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

The tenant made an application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice. She testified that she does not believe that the landlord's husband's daughter is moving into the rental unit.

The landlord provided sworn testimony and documentary evidence in support of her testimony. She provided a doctor's letter indicating her husband's currently worsening condition. She provided a signed letter from her husband's daughter stating that she is moving in to the current rental unit assist with care of her father. The tenant provided no evidence, beyond her own testimony, to contradict the evidence of the landlord. I find that the landlord has provided sufficient evidence on a balance of probabilities to prove that the rental unit will be occupied by a close family member.

I note that the tenant will receive both compensation and an avenue of recourse if she is able to show, at a later date that the landlord did not use the rental unit for the intended

purpose. Section 51 provides the particulars of tenant compensation with respect to a 2 Month Notice;

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Based on my finding that the landlord's 2 Month Notice is valid, I need not consider the landlord's application for an order of possession based on the 1 Month Notice for Cause. I dismiss that application.

The tenant also applied for an order requiring the landlord to make repairs to the rental unit and residential premises. She applied to have the landlord cut the lawn. That application is dismissed. It is moot given that the tenancy is ended. The tenant applied to have the carbon monoxide detector replaced within the rental unit. This application is also moot now that the tenancy has ended. I dismiss this portion of the tenant's application, as well. I also dismiss the tenant's application to recover the filing fee in these circumstances.

As the landlord has been successful in her application, I find that she is entitled to recover the \$50.00 filing fee for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in 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 22, 2015

Residential Tenancy Branch

