



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: OPL, MNDC
For the tenant: CNL, MNSD, OLC, MT

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The landlord applied for an order of possession for the rental unit pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of the Property ("Notice") issued to the tenant and a monetary order for money owed or compensation for damage or loss.

The tenant applied for an order cancelling the landlord's Notice, a monetary order for a return of their security deposit, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and for an order granting more time to make an application to cancel a notice to end tenancy.

The landlord and tenant attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the participants gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, question the other party, and make submissions to me.

At the outset of the hearing, there were no issues raised regarding the service of the other's application. The landlord submitted that she had not served the tenant with her additional evidence, as required by the Dispute Resolution Rules of Procedure (Rules); I have therefore excluded the landlord's supplemental evidence. I note that this exclusion of the landlord's evidence had no impact on my Decision in this matter as to the validity of the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portions of the landlord's application seeking monetary compensation and the tenant's application seeking monetary compensation, a request for her security deposit, and a request for an order for the landlord's compliance with the with the Act, regulations, or tenancy agreement are unrelated to the primary issue of upholding the Notice or disputing the Notice, respectively.

As a result, pursuant to section 2.3 of the Rules, I have severed those portions of the parties' applications and they are dismissed, with leave to reapply.

The hearing proceeded only upon the merits of the landlord's Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit pursuant to her Notice?

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The undisputed evidence shows that this month-to-month tenancy began on April 1, 2014, monthly rent is \$1500.00, and that the tenant paid a security deposit of \$750.00 and a pet damage deposit of \$450.00. A copy of the written tenancy agreement was provided into evidence by the tenant.

As mentioned, the subject of this dispute is the Notice, issued on March 25, 2015, by registered mail, with an effective end of tenancy date listed as May 31, 2015, according to the landlord. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse. The tenant supplied a copy of the Notice.

The Notice informed the tenant that she had 15 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out

date listed on the Notice. The tenant filed her application in dispute of the Notice on May 25, 2015.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice.

Landlord's application-

The landlord submitted that she bought the home in question approximately 8 years ago, with the intention of moving into the home at the appropriate time. The landlord submitted further that the time has now come, as she has given notice where she is renting now, and moved out. The landlord submitted further that as the tenant has not vacated the rental unit, she is staying temporarily with her son and her personal property is in storage.

Tenant's response-

The tenant submitted sufficient evidence that the relationship with the landlord has deteriorated and that she has been looking for a new home, but with children and the tight rental market, she has not been able to secure other accommodations.

As to receipt of the Notice, the tenant submitted that she did not receive the registered mail envelope from the landlord containing the Notice when it was first mailed in March 2015. In response to my question, the tenant submitted that she was traveling in and out of town dealing with family members and did not receive notice that she had registered mail to collect. The tenant submitted further that she ultimately received the Notice on May 20, 2015, when the landlord sent the Notice by registered mail.

Analysis

In considering whether the tenant filed her application in dispute of the Notice within the required time frame of 15 days of receipt, section 90 of the Act states that documents served by registered mail are deemed delivered five (5) days later. In this case, the landlord submitted that she first mailed the Notice to the tenant on March 25, 2015, and then the tenant would be deemed to have received the Notice on March 30, 2015, allowing the tenant until April 14, 2015, to file her application to dispute the Notice. Under section 11 of the Residential Tenancy Branch Policy Guideline, however, the deeming provisions are not always conclusive and can be rebutted if there is clear evidence to the contrary.

In the case before me, I accept the tenant's affirmed tenancy that she was out of town and did not receive a notice that she had registered mail to collect, and the registered mail shows that it was unclaimed. I further accept that the tenant received the Notice by registered mail on May 20, 2015, and that when she filed her application on May 25, 2015, the tenant filed her application within the required time frames.

As to the listed effective end of tenancy date of May 31, 2015, a 2 Month Notice to end the tenancy is not effective earlier than two months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, two clear calendar months before the last rent payment is due is required in giving notice to end the tenancy.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to July 31, 2015, due to the tenant's receipt of the Notice on May 25, 2015, and the requirement to give 2 full months to vacate the rental unit after receipt of the Notice.

Landlord's application-

Section 49(3) of the Act stipulates that a landlord who is an individual 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.

In considering whether the landlord has acted in good faith, a two part test is imposed, namely, that landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy and that the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

As to the Notice, in the circumstances before me, I find that the landlord has submitted sufficient undisputed evidence that she intends to occupy the rental unit for her own use as a living accommodation.

Further, after hearing the evidence of both parties, I cannot find that the landlord had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I therefore find that, upon a balance of probabilities, the landlord has met her burden of proving the rental unit will be used for the stated purpose listed on the Notice and that the Notice was issued in good faith.

As I have found that the landlord has supported her Notice, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective at 1:00 p.m. on July 31, 2015, the corrected effective date of the Notice.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Tenant's application-

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The landlord's application for an order of possession for the rental unit has been granted.

The tenant's application seeking cancellation of the landlord's Notice is dismissed.

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 29, 2015

Residential Tenancy Branch

