



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: OPL
Tenant: CNL MNDC OLC ERP RP OPT RR O

Introduction

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

The landlord applied for an order of possession based on a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) dated August 28, 2015.

The tenant applied to cancel the 2 Month Notice dated August 28, 2015, for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,400, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order directing the landlord to make emergency repairs for health or safety reasons and to make regular repairs to the unit site or property, for authorization to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to obtain an order of possession for the rental unit, and “other” although the details of dispute do not identify an additional remedy in addition to what is described above.

The tenant, the landlord, and the spouse of the landlord attended the teleconference hearing and were affirmed. The parties were provided the opportunity to ask questions about the hearing process. The parties were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant and landlord stated that they received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

Firstly, the tenant's application for an order of possession for the rental unit was dismissed as the tenant confirmed that at the time of the hearing, she had possession of the rental unit.

Secondly, rule 2.3 of the Residential Tenancy Branch Rules of Procedure ("Rules of Procedure") authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 2 Month Notice dated August 28, 2015. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 2 Month Notice dated August 28, 2015 at this proceeding. The balance of the tenant's applications is dismissed, with leave to re-apply.

Thirdly, the tenant requested an adjournment so that she would have additional time to submit documentary evidence in response to the 2 Month Notice. The tenant testified that on October 5, 2015 she underwent surgery on her feet and that there is a 5-6 week recovery time after the surgery. I have considered rule 6.4 of the Rules of Procedure which sets out the adjournment criteria and I find that there would be a greater prejudice to the landlord who has submitted a notice to end tenancy for her current rental unit effective October 31, 2015, and that this matter related to a cross-application in relation to a 2 Month Notice with an effective vacancy date of October 31, 2015. Furthermore, I have considered that rule 3.4 of the Rules of Procedure states that to the extent possible the applicant must file copies of all available documents at the same time the application is filed. I find that as the tenant applied on September 9, 2015, the tenant had ample time to submit documentary evidence before her surgery on October 5, 2015, especially considering the tenant was disputing an eviction notice with an effective vacancy date of October 31, 2015. As a result, the tenant's request for an adjournment is denied.

Regarding the tenant's four witnesses, the tenant was asked what each tenant would be speaking to as witnesses, none of which related to the 2 Month Notice. As a result, I find that it was not necessary to hear testimony from the tenant's four witnesses.

Issue to be Decided

- Should the 2 Month Notice dated August 28, 2015 be cancelled or upheld under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on May 15, 2015 and that monthly rent is \$1,600 per month and due on the first day of each month. The parties agreed that the tenant paid a \$800 security deposit and a \$800 pet damage deposit at the start of the tenancy.

The tenant confirmed that she was served on August 28, 2015 with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 28, 2015. The effective vacancy date on the 2 Month Notice is listed as October 31, 2015. The tenant disputed the 2 Month Notice on September 9, 2015 which was within the allowable time limitation under the *Act* of 15 days pursuant to section 49 of the *Act*. Page two of the 2 Month Notice indicates the reason as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The tenant indicated that she was disputing the 2 Month Notice because she did not believe the 2 Month Notice was issued in good faith and testified that she did not believe the landlord and her spouse was currently living at the address for which they provided a notice to end tenancy effective October 31, 2015.

The landlord and her spouse testified that they have been renting at their current address since November 1, 2014. The landlord referred to a document submitted in evidence, a one month notice dated September 27, 2017, which the landlord stated should have read September 27, 2015 as it contained a typographical error, and has the address they are currently renting and that they will be vacating the property as of October 31, 2015 and moving back into their home and provides the area where the home is located.

The tenant claims she has evidence that the address provided by the landlords is a commercial space but had no documentary evidence to support her allegation. The landlords disputed the tenant's allegations and stated that the home they were currently renting was indeed a home.

The landlords are seeking an order of possession for the effective date of the 2 Month Notice which is October 31, 2015.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice by stating that she did not believe the landlords issued the 2 Month Notice in good faith and that the landlord's address is a commercial space, which the landlord and her spouse vehemently denied. The reason indicated on the 2 Month Notice is "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The landlord provided documentary evidence, a written one month notice, supporting that the landlord plans to vacate their rental unit on October 31, 2015, and move back into their home on November 1, 2015. I accept that the date listed on the one month notice contained a simple typographical error on the year and ought to have read 2015 versus 2017, which is reasonable to conclude as 2017 is in the future. I note that the tenant failed to provide any supporting documentary evidence to support her claim that the landlord was not residing at the address to which the landlord provided written notice the landlord was vacating. I also note that the service address for the landlord on the landlord's application matched the address indicated on the one month written notice submitted in evidence.

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlords to be valid. I dismiss the tenant's application to cancel the Notice and uphold the 2 Month Notice issued by the landlord with an effective vacancy date of October 31, 2015. Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the landlord's application for an order of possession, I find that the landlord is entitled to an order of possession effective **October 31, 2015 at 1:00 p.m.**, which is the effective date on the 2 Month Notice. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the 2 Month Notice issued by the landlord.

The landlord has been granted an order of possession effective October 31, 2015 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 22, 2015

Residential Tenancy Branch

