



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI LAT O FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for 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; authorization to change the locks to the rental unit pursuant to section 70; an order regarding a disputed additional rent increase pursuant to section 43; 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. Tenant JB attended on behalf of both tenants. The tenant confirmed receipt of 2 Month Notice to End Tenancy for Landlord's Use that was posted on the tenants' rental unit door on September 28, 2015. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The landlord confirmed receipt of the tenant's Application for Dispute Resolution hearing package and Notice of Hearing. The landlord made an oral application for an Order of Possession should the tenant be unsuccessful in dispute the Notice to End Tenancy.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy be cancelled?

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

Is the tenant entitled to authorization to change the locks to the rental unit?

Is the tenant entitled an order regarding a disputed additional rent increase?

Is the tenant entitled authorization to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the residential tenancy agreement began on February 27, 2013. The rental amount for this unit was established at \$2000.00 at the outset of the tenancy. The landlord increased the rent to \$2100.00 with the use of a notice to increase tenancy as of February 27, 2014 and again issued a notice for a rent increase

to \$2150.00 as of February 27, 2015. The tenants applied to dispute both the second rental increase by the landlord. The landlord testified that she continued to hold the \$1000.00 security deposit paid by the tenants on February 27, 2013.

The tenants applied to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use issued by the landlord on September 28, 2015. The landlord relied on the reason that she (the landlord) intends to take residence in the current rental unit. The landlord provided evidence at this hearing including a hospital admittance document dated April 4, 2015 and a doctor's letter dated December 3, 2015 stating that the landlord has balance related issues and has had "recurrent falls". The letter also stated that it was recommended that she move from her current home to an apartment where she would be in less jeopardy of falling. The landlord's lawyer and advocate testified on her behalf that she currently resides in an older home in a location that is not very accessible. The home itself has many stairs inside and many steps outside the residence. As the tenant is 71 and suffering from balance and mobility issues, the landlord has been decided to relocate to the tenants' current rental unit - a more accessible home.

Tenant JB submitted that the landlord's doctor letter is manufactured. Further, he submitted that he believes the unit has been re-rented and that the new tenants are awaiting his move-out. He was unable to provide any documentary or other evidence in the hearing to suggest that the landlord's motivations for the notice to end tenancy were nefarious. In fact, the landlord and her advocate offered to supply further documentation to the tenant to confirm that the landlord does in fact move into the rental unit.

Tenant JB testified that he and his co-tenant agreed to a rental increase of \$100.00 to come into effect February 2014. He testified that, as part of this agreement, the landlord agreed she would not increase the rent in the following year (2015). The following year, the landlord sought to increase the rent by another \$100.00. As of February 2015, the tenants paid an increase to \$2150.00 not \$2200.00, according to the photocopies of tenant cheques submitted by the landlord as evidence for this hearing. Tenant JB testified that he "disputed" this increase in that it was not in accord with the previous agreement with the landlord. However, the tenants did not file to dispute the rent increase at the Residential Tenancy Branch and provided no documentation to suggest they advised the landlord they did not agree to this further increase. In fact, the tenants testified that they have paid this new rental amount each month until the landlord refused to take any further rental payment. I note, while it has limited relevance at this hearing the landlord claims the tenant has not paid rent for the month of this hearing however Tenant JB claims that the landlord has refused to accept further rental payment at this time.

The tenants also applied to change the locks at the rental unit and limit the access of the landlord. Tenant JB provided undisputed sworn testimony that the landlord entered his rental unit without formal notice or permission. He testified, supported by documentary evidence (correspondence with the landlord) that his wife happened to be at home that day and she was very frightened by the landlord's entrance into the home. His wife was unable to attend or testify at this hearing. He testified that she hid under the bed at the time, not knowing who had entered the rental unit.

The landlord's lawyer and advocate testified that the landlord misunderstood the requirements to enter a rental unit. She believed, given an email message the day before, that she could enter the unit to return post-dated cheques to the tenant, placing them in his rental unit. She acknowledges that she should not have done so and that her action was in contravention of the *Residential Tenancy Act*.

Analysis

The landlord provided a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. She provided, as her reason to end the tenancy that she intended to reside in the rental unit herself. A landlord may provide note to end a tenancy for her own use.

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) 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.

..

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

The landlord provided evidence to support her claim that she intends to use her rental unit for her own purposes. I accept the evidence, documentary and testimonial of the landlord that she is moving into the rental unit to provide her more safety after several falls in her current home. The landlord provided notice to the tenants in accordance with the Act. The tenant made an application pursuant to section 49(8) of the Act to dispute the 2 Month Notice to End Tenancy for Landlord's Use of Property. However, I find that the landlord has provided sufficient evidence that she intends to move into the rental unit. Therefore, I find that the 2 Month Notice to End Tenancy is valid and I dismiss the tenant's application to cancel the 2 Month Notice. I further find that, in consideration of the landlord's oral application at the outset of this hearing, the landlord is entitled to an Order of Possession dated January 31, 2016 pursuant to section 55 of the Act.

Section 55(1) of the Act reads as follows:

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.

Given that this tenancy shall come to an end in accordance with section 49 of the Act, both parties should make note of the provisions of section 49 and the related provisions in section 50 regarding an end to tenancy for landlord's use. The tenant is entitled to compensation with respect to the end of tenancy and the landlord may be required to provide proof of their use of the property if the tenant were to make a future claim under section 50 of the Act.

With respect to the tenants' application to dispute the landlord's rental increase, I refer to the relevant provisions of the Act.

- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Pursuant to section 43 of the *Act*, the amount of a rent increase must be calculated in accordance with the Residential Tenancy Regulations, by order of a Residential Tenancy Branch arbitrator or by written agreement with the tenant. While the tenants paid the rental increase from February 2015 to the date of this decision, I find that the rental amount was increased by \$50.00 and I note that rental increase is within the allowable amounts pursuant to the regulations. Given the agreement to the first increase and the amount of this second rental increase, I find that the tenants are not entitled to recover the amount of the rental increase from February 2015.

However, I find that the tenant is entitled to an order that they may change the locks to the rental unit in accordance with their application under section 70 of the *Act*.

- 70** (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].
- (2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may
- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
 - (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

The landlord and her counsel acknowledged that she failed to comply with section 70 of the *Act* by entering the tenants' rental unit without notice or permission. The landlord also rightly acknowledged that this may have upset the tenant that was in the unit at the time she entered. Given this acknowledgement and given the importance of the tenant's right to privacy and exclusive use of their rental unit, I order that the tenants may change the locks to the rental unit in accordance with the *Act*. I note that the tenants will be required to provide the landlord with access to the rental unit, the new locks and any keys when they vacate the unit on January 31, 2016 in compliance with the landlord's Order of Possession.

As the tenants were unsuccessful in the majority of their application, I find they are not entitled to recover the filing fee from the landlord.

Conclusion

I dismiss the tenant's application to dispute the rental increase.

I dismiss the tenants' application to cancel the notice to end tenancy. I grant the landlord's oral request pursuant to section 55 for an Order of Possession dated January 31, 2016.

The landlord is provided with a formal copy of an Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the tenants may change the locks to the rental unit.

I order that the tenants provide all new locks and keys to the rental unit to the landlord on January 31, 2016 by one o'clock.

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 31, 2015

Residential Tenancy Branch

