



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the landlord: OPL FF
For the tenant: MT CNL FF

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 for landlord’s use of property, and to recover the cost of the filing fee. The tenant applied for more time to make an application to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”), to cancel the 2 Month Notice, and to recover the cost of the filing fee.

The tenant, the landlord, and an agent for the landlord (the “agent”) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties were advised that the tenant’s request for more time to make an application to cancel the 2 Month Notice was moot as the tenant did apply within the 15 day timeline pursuant to section 49 of the *Act*. As a result, I do not find it necessary to consider this portion of the tenant’s request further.

Issues to be Decided

- Should the 2 Month Notice dated December 30, 2015 be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on January 12, 2014 and reverted to a month to month tenancy after July 11, 2014. Monthly rent in the amount of \$1,000.00 was due on the first day of each month and was eventually increased to \$1,025.00 in 2015. A security deposit of \$500.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed being served with the 2 Month Notice dated December 30, 2015 on December 30, 2015. The effective vacancy date on the 2 Month Notice is listed as February 29, 2016. The tenant disputed the 2 Month Notice on January 10, 2016 which was within the allowable time limitation under section 49 the *Act*, which is 15 days. 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 has raised the issue of good faith and testified that due to the landlord attempting to raise the tenant's rent by \$100.00 or 10% in July of 2015, that the landlord is acting in bad faith by issuing a 2 Month Notice in December of 2015. The tenant also stated that the landlord requested 12 post-dated cheques at the start of the tenancy and that since July 2015, the landlord has only requested up to 3 post-dated cheques at a time.

The landlord denied that she served the 2 Month Notice in bad faith. The agent testified that his mother plans to retire in the rental unit as she is now 65 years old and that has been her retirement plan all along. The agent stated that she is only living in her current residence in downtown Victoria as an investment and will be listing it for sale as soon as she moves back to the residence, the rental unit, to retire.

In addition, the landlord vehemently denied that she issued the 2 Month Notice due to the tenant not wanting to agree to a raise in rent of \$100.00 back in July of 2015. The parties reached an agreement that rent would increase by the amount allowable for 2015 which was 2.5% or \$25.00 which increased rent from \$1,000.00 to \$1,025.00. The landlord stated that she understood that she would not be able to re-rent the rental unit for at least six months and stated that she does not plan to rent it as she will be retiring in the unit.

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 he did not believe the landlord issued the 2 Month Notice in good faith. 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 testified that she plans to move into the rental unit to retire as she is now 65 years old, and it has always been her plan to sell her current investment property and move to the rental unit to retire.

I find the tenant has provided insufficient evidence to support that the 2 Month Notice was not issued in good faith. Although the parties did not agree upon a \$100.00 rent increase in July of 2015, the 2 Month Notice was not issued until six months later in December of 2015. I also note that the rent did increase by \$25.00 by agreement of the parties and that the neither reason proposed by the tenant is a reasonable reason to support an allegation of bad faith.

Based on the above and on the balance of probabilities, **I dismiss** the tenant's application **without leave to reapply** due to insufficient evidence and I find that the landlord has met the burden of proof and **I uphold** the 2 Month Notice issued by the landlord dated December 30, 2015 as it is valid. Section 55 of the *Act* applies and 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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52** *[form and content of notice to end tenancy]*, **and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Given the above and taking into account that I have dismissed the tenant's application and the effective date of the 2 Month Notice has passed, I find that the landlord is entitled to an order of possession **effective two (2) days** after service on the tenant.

As the landlord's application is successful, **I grant** the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. **I authorize** the landlord to deduct **\$100.00** from the tenant's security deposit pursuant to section 72 of the *Act*, in full satisfaction of the recovery of the cost of the filing fee under the *Act*. This results in the tenant's security deposit being reduced from \$500.00 to the current amount of \$400.00.

As the tenant's application was dismissed, I do not grant the tenant the recovery of the cost of the filing fee.

Conclusion

The tenant's application is unsuccessful.

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. A copy must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit pursuant to section 72 of the *Act*, in full satisfaction of the recovery of the cost of the filing fee under the *Act*. The tenant's security deposit is now \$400.00 as a result.

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: March 1, 2016

Residential Tenancy Branch

