



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL,FF; CNL, RR, FF

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

This hearing also addressed the tenant's cross application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy for Cause, ("2 Month Notice for Cause") pursuant to section 47; and
- authorization for the tenant 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.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The parties confirmed receipt of each other's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the parties were duly served with the applications.

Preliminary Issue – Amendment of Tenant's Application

Although the tenant applied to cancel a 2 Month Notice for Cause, she acknowledged she did not receive a 2 Month Notice for Cause rather, she received a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The tenant confirmed that she wished to amend the tenant's Application to dispute the 2 Month Notice. The landlord consented to this amendment, as she agreed that the Notice was given for landlord use and not for cause. Given the landlord's consent and in accordance with

section 64(3)(c) of the *Act*, I amend the tenant's Application to cancel the 2 Month Notice.

The tenant confirmed personal receipt of the landlords 2 Month Notice, dated February 29, 2016 on the same date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the parties entitled to recover the filing fee for their application?

Background and Evidence

The rental unit consists of an upper level unit in which the landlord resides and two lower units. The tenant occupies one of the two lower units while the other is currently vacant. The landlord testified that this tenancy began on April 1, 2015, while the tenant testified that it began in April 15, 2012. The tenant stated that she has lived in this same rental unit since April 15, 2012, and in 2015 when the landlord purchased the rental unit she signed a new tenancy agreement. The parties indicated that this tenancy is on a month to month basis and monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

On February 29, 2016 the landlord issued the 2 Month Notice, indicating that the rental unit had been sold and the purchaser has asked in writing to give notice because the purchaser intends in good faith to occupy the rental unit. The notice indicates an effective move-out date of April 30, 2016.

The tenant testified that just days prior to receiving the 2 Month Notice, she had sent two separate letters to the landlord. The letters referred to issues with the tenancy including but not limited to internet connection and unauthorized entrance into the rental unit. The landlord confirmed receipt of these two letters. It is the tenant's position that upon receiving the letters the landlord issued the 2 Month Notice to avoid addressing

ongoing problems, while it is the landlord's position that the 2 Month Notice was given at the request of the purchaser for their own use.

The tenant testified that her rental unit was never shown to prospective purchasers and there was no sale sign on the property. The tenant stated she did not know the rental unit was for sale. The landlord confirmed the tenant was not notified of the sale and the tenant's rental unit was not shown to prospective buyers. The landlord explained the absence of a sale sign was due to the quick sale of the home. The landlord testified the home sold within four days.

The tenant stated that on February 29, 2016, the day she received the 2 Month Notice, she observed the landlord's realtor showing the vacant unit next to hers. The tenant explained that it is her belief the purchaser is planning to rent out the rental unit, not live in it. She testified she overheard the realtor tell his male companion the rental price of the vacant unit. The tenant acknowledged she did not confirm her suspicion with the realtor as her only conversation with him this day was to say "hello." The tenant further testified that she was in and out of the laundry room while she observed the realtor and his male companion. The landlord testified they had no knowledge of the realtor being on the premises or showing the vacant unit on February 29, 2016.

The landlord recalled that subject removal for the property was sometime between February 21 and 22, 2016. The landlord has provided a letter dated February 29, 2016 in which the purchasers asked the landlord to give notice because they intended to occupy the whole property. The landlord testified the sale transaction completed on March 2, 2016 and has provided a copy of the land title search showing the new registered owners effective this same date.

The tenant is seeking to reduce rent for repairs to the bathroom and internet. The tenant testified that the house inspector used by the landlord during her purchase, recommended the bathroom tiles in the tenants rental unit be replaced. The tenant testified that the landlord verbally told her once the upstairs renovations were complete, the landlord would ensure the bathroom in her rental unit was renovated. The landlord denied having this conversation. The tenant is seeking a reduction in rent for the loss of internet. It her position that internet was included with the rent and she has not had a connection since the landlord purchased the property in 2015. The landlord contended that internet is not part of the tenancy and was not indicated on the tenancy agreement.

Both parties are also seeking to recover the \$100.00 filing fee for their Application.

Analysis

The Act allows a landlord to end a tenancy if the landlord intends in good faith to sell the unit and after all the conditions of sale are removed, the purchaser requests the seller issue the 2 Month Notice because they or a close family member intend to move in. I am satisfied the house sold and the purchaser requested the seller give notice February 29, 2016 after the conditions of sale were removed between February 21 and February 22 ,2016.

The tenant questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of the tenants request for repairs. I accept that the contract of purchase and sale was completed prior to February 21 when the subjects were removed which was before the tenant gave the landlord the second letter requesting repairs, therefore this second letter could not have formed the basis of a bad faith action on the part of the landlord. I do not find it probable that the first letter dated February 20, 2016 prompted the 2 Month Notice, rather I find it more probable that the landlord was otherwise engaged in the sale of the rental unit at this time and issued the notice as per the purchasers request on February 29, 2016. Accordingly I find the landlord has not acted in bad faith in issuing the 2 Month Notice.

The tenant also questioned the good faith of the purchaser in suggesting that the purchaser plans to rent out the unit rather than live in it. The tenant has not provided any substantiating evidence that the purchaser plans to rent out the unit. She provided testimony of her observation of a realtor visiting the unit with a male companion, but she had no direct relevant conversation with either of the individuals to confirm her suspicion. In the absence of substantiating evidence, I find the purchaser has not acted in bad faith.

Based on these reasons I find the landlord was entitled to end the tenancy with a 2 Month Notice. Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice and uphold the landlord's 2 Month Notice. I find the landlord is entitled to an Order of Possession, effective at 1:00 p.m. on April 30, 2016, pursuant to section 55 of the *Act*.

Because the tenant will be vacating the rental unit and there will be no further rent payments to deduct repairs from I dismiss this portion of the tenant's application. As per section 55 of the *Act*, the director must grant the landlord an order of possession if the director dismisses the tenant's application or uphold the landlord's notice. Consequently, the landlord's application was not required and the landlord's application to recover the filing fee is dismissed.

Conclusion

I grant an Order of Possession to the landlords **effective at 1:00 p.m. on April 30, 2016**. Should the tenant or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' application to recover the filing fee is dismissed without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: April 26, 2016

Residential Tenancy Branch