



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, MNSD, RR, FF

Introduction

On May 30, 2016, the Tenant submitted an Application for Dispute Resolution asking for more time to make application to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property; for money owed or compensation for damage or loss; to deduct the cost of repairs from the rent; for the return of the security deposit; and to recover the cost of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* ("the *Act*") requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Tenant's Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issues

The Tenant is seeking several orders. Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's application is whether or not the tenancy will continue. Further, the majority of the relief being sought by the Tenant is monetary in nature. Accordingly, I find it appropriate to exercise my discretion to

dismiss all but the Tenant's application to cancel the 2 Month Notice, with leave to reapply for the monetary claim at a later date.

Issues to be Decided

- Is the 2 Month Notice To End Tenancy For Landlord's Use of Property dated May 17, 2016 effective?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on August 7, 2015, as a one year fixed term tenancy to continue thereafter as a month to month tenancy. Rent in the amount of \$833.00 is payable on the first of each month and a \$417.00 security deposit was paid by the Tenant to the Landlord.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord Use of Property; ("the Notice") dated May 17, 2016. The Notice indicates that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Landlord testified that he issued the Notice to the Tenant by sending it by registered mail and by posting a copy on the Tenant's door on May 17, 2016. The Notice states that the Tenant must move out of the rental unit by July 31, 2016.

The Landlord testified that he is moving into the rental unit. He submits that he currently only has one bedroom and that he is moving into the rental unit because it affords him more space. He testified that he has already made arrangements with a moving company; BC Hydro; locksmith; painters; and carpet installers; and he will be moving in to the rental unit on August 1, 2016.

The Tenant testified that he is disputing the Notice because he believes that the Landlord does not have the right to issue a Notice to end the tenancy during a fixed term tenancy.

Section 49 (2) of the Act states that a Landlord may end a tenancy by giving notice to end the tenancy effective on a date that must be:

- not earlier than 2 months after the date the Tenant receives the notice,
- 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

- if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties entered into a fixed term tenancy agreement that ends on July 31, 2016. The Notice issued by the Landlord specifies that the end of the tenancy is on July 31, 2016. I find that the Landlord's Notice is not earlier than the date specified as the end of the fixed term tenancy. I find that the Landlord's Notice complies with section 49 of the *Act*.

The burden is on the Landlord to prove the intent to occupy the rental unit. I am satisfied by the Landlord's testimony and evidence that he intends to use the rental unit for the purpose stated within the Notice.

I dismiss the Tenant's application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated May 17, 2016.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 p.m. on July 31, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant did not pay a fee for the application and therefore his request to recover the filing fee is dismissed.

Conclusion

The Tenant's application to cancel the 2 Month Notice To End Tenancy for Landlord's Use Of Property dated May 17, 2016, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on July 31, 2016. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Tenant has leave to reapply for his monetary claim.

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 30, 2016

Residential Tenancy Branch