



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, RP, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord complete repairs and emergency repairs and to reduce rent.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

On August 8, 2016 the tenant submitted an Amendment to an Application for Dispute Resolution form seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. I accept this amendment.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property; the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy are not sufficiently related to the tenant's claim for repairs and emergency repairs or for a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the 2 Month Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in either the 2 Month Notice or the 10 Day Notice. I exercise my discretion to dismiss the tenant's claim for repairs; emergency repairs and a rent reduction. I grant the tenant leave to re-apply for these other claims.

I note that Section 55 of the *Residential Tenancy Act (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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property or the 10 Day Notice to End Tenancy for Unpaid Rent it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy began in July 2013 for a current monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 paid.

The tenant submitted into evidence the following relevant documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on June 30, 2016 with an effective vacancy date of September 1, 2016 citing the rental unit will be occupied by the landlord or the landlord's close family member; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 5, 2016 with an effective vacancy date of August 15, 2016 due to \$1,600.00 in unpaid rent.

The tenant submitted that she questions the landlord's good faith in regard to the 2 Month Notice to End Tenancy. She states that it all began last year (November 2015) when there was a flood in the rental unit and that it took a long time to make repairs to the property.

She states that in addition to these problems the landlord indicated to her in March 2016 that his mother was going to be moving to BC from Alberta while she was undergoing some cancer treatment and that she would be living in the unit. She states that after that the landlord decided that he and his family was going to move into the rental unit.

The landlord agreed that his mother was originally going to move into the rental property but that when she first got out to BC they found her alternate accommodation which she likes and she has decided to stay there.

The landlord testified that he has an arrangement with his landlord that once this is all resolved with this tenant he will release the landlord from his tenancy where the landlord

is currently living. The landlord has provided no documentary evidence to support this position.

The landlord agreed that after his mother decided this he and his family were faced with a life change that has impacted their finances to such a degree that he has to give up his current rental and move back into the rental unit. The landlord provided no further explanation as to what these changes were.

The tenant confirmed that she did not pay rent for the month of August 2016 because she was aware she was entitled to receive it as compensation for the 2 Month Notice. She stated she was confused as to what to do because she got two different answers when she contacted the Residential Tenancy Branch.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Residential Tenancy Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

In the case before me I find that the tenant has called into question the landlord's good faith in regard to this 2 Month Notice. As such, the burden rests with the landlord to submit sufficient evidence to establish that he intends to move into the rental unit.

I am persuaded by the tenant's submissions that the landlord has provided no evidence of his intent to move into the unit. I find the landlord has provided no corroborating evidence to confirm his intent such as confirmation from his own landlord as to their mutual agreement or, even as the tenant suggested, confirmation from local schools that his children would be attend school in this new area.

As such, I order that the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on June 30, 2016 is cancelled.

While I recognize that Section 51 allows a tenant to not pay the last months' rent for compensation when she receives a 2 Month Notice, I also note that Section 49(8) allows the tenant to dispute a 2 Month Notice. Section 49(9) acknowledges that if the tenant does not file an Application to dispute the 2 Month Notice she is deemed to have accepted the end of the tenancy in accordance with the Notice.

In this case, I find the tenant did not accept that the tenancy would end in accordance with the Notice she received and filed an Application for Dispute Resolution. As such, the chance existed that the tenancy would continue beyond the effective date of this Notice.

As a result, I find the tenant intended for the month of August 2016 to not be the last month of the tenancy and as such had not authourity to withhold the rent payment for any period of time let alone once the landlord issued the 10 Day Notice.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

As I have found the tenant did not have the authourity to withhold the rent once she sought to cancel the 2 Month Notice I find the landlord was entitled to issue a 10 Day Notice to End Tenancy for Unpaid Rent. As such, I dismiss the tenant's Application to cancel the 10 Day Notice issued on August 5, 2016.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on August 5, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's

notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

As the tenant was not successful in cancelling both notices to end tenancy I dismiss her claim to recover the filing fee.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: August 29, 2016

Residential Tenancy Branch

