



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT CNE CNL OPT AS FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated July 29, 2016 (the “2 Month Notice”), for more time to make an application to cancel a notice to end tenancy, to cancel a notice due to the tenant’s employment with the landlord ending, for an order of possession for the rental unit by the tenant, for authorization to assign or sublet because the landlord’s permission has been unreasonably withheld, and to recover the cost of the filing fee.

The tenant and landlord 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.

The tenant’s late documentary evidence was excluded from the hearing after hearing submissions from the tenant and the landlord as to why the tenant waited so long to serve his late documentary evidence. Based on the Rules of Procedure, I have excluded the tenant’s late documentary evidence as the tenant had insufficient reasons for serving his late documentary evidence so close to the hearing date.

Preliminary and Procedural Matters

Firstly, the tenant’s application for more time to make an application to cancel a notice to end tenancy is dismissed as it is moot. The tenant applied within the 15 day timeline provided for under section 49 of the *Act*.

Secondly, the tenant’s application to cancel a notice due to the tenant’s employment ending with the landlord is dismissed as the tenant was not served with a notice to end tenancy that included a reason relating to the tenant’s employment ending.

Thirdly, the tenant's application for an order of possession for the tenant is dismissed as the tenant was occupying the rental unit as of the date of the hearing.

Fourthly, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 2 Month Notice. I find that tenant's request to assign or sublet the rental unit in his Application for Dispute Resolution is not sufficiently related to be determined during this proceeding unless it becomes moot if the 2 Month Notice is upheld. I will, therefore, either dismiss this portion without leave to reapply if the 2 Month Notice is upheld or in the alternative, will dismiss with leave to reapply if the 2 Month Notice is cancelled. As a result, I will address this matter later in this Decision.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Background and Evidence

Neither party provided a copy of the written tenancy agreement between the parties in evidence. Based on the testimony of the parties, a month to month tenancy began on April 1, 2016. While the tenant attempted to claim it was a fixed term tenancy until 2017, the tenant later admitted that the "month to month" portion on page two of the tenancy agreement was checked off, which I find makes the tenancy agreement a month to month tenancy. So while I did not have a copy of the tenancy agreement before me, I have relied on the testimony of both parties in making this finding.

The parties agreed that monthly rent of \$600.00 per month is due on the first day of each month. The parties also agreed that an addendum to the tenancy agreement provided details of a work for rent agreement. The addendum to the tenancy agreement was not submitted in evidence.

There is no dispute that the tenant was served with the 2 Month Notice by the landlord and applied to dispute the 2 Month Notice within the 15 day timeline provided under section 49 of the *Act*. The effective vacancy date on the 2 Month Notice is listed as September 30, 2016. 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 indicated that he was disputing the 2 Month Notice because he did not believe the landlord's notice was legal. The landlord testified that she is currently living in a suite that is approximately 350 square feet and that she also has her seven year old daughter living with her. The landlord testified that it has always been her intention since she purchased the home to move into the 1,800 square foot portion of the home (the "rental unit") which the tenant currently occupies. The tenant disputed that the landlord could live in the rental unit as it does not currently have insulation in the walls. The tenant was asked if he wanted to remain in the rental unit and he said "yes". The tenant was also asked to explain why if his position was that the rental unit could not be lived in by the landlord due to insulation not being in the walls due to construction; how could the tenant live in the rental unit? The tenant replied "I live in a bedroom upstairs".

The tenant continually alleged during the hearing that he was owed money by the landlord for his construction work in the rental unit, which the landlord vehemently denied. Even when the tenant was advised that there was no monetary application before me and that I would only be determining whether the 2 Month Notice was valid or not based on the reason stated by the landlord in the 2 Month Notice, the tenant repeatedly stated, "I will just appeal this".

The tenant alleged that the landlord has had two contractors over to the rental unit and that both contractors have been offered the same arrangement as the tenant to perform work in lieu of rent and a place to live by the landlord. The landlord vehemently denied that two contractors attended the rental unit and that any such offer was made. The landlord testified that one contractor was asked for a quote to finish the work that the tenant had failed to do and that she would never ask that contractor, who is a friend, to live at the rental unit and stated that he already lives in his own residence and does not need accommodation at her home.

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's 2 Month Notice was legal. 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 it has always been her intention to move into the larger area of the home and that she has

no plans to re-rent any portion of the home and fully intends to occupy the entire home. The tenant stated that the landlord could not live in the rental unit portion of the home as there was no insulation in the walls, which I do not accept as the tenant is currently residing in the rental unit and does not want to leave. As a result, I find the tenant's testimony to be contradictory and not reasonable. Furthermore, I find the landlord's testimony to be both reasonable and consistent throughout the hearing. As a result, I prefer the testimony of the landlord over that of the tenant.

Furthermore, as the reason indicated in the 2 Month Notice includes that the rental unit will be occupied by the landlord, I have referred to the Black's Law Dictionary sixth edition for the legal meaning of the word "occupy".

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[my emphasis added]

The word "occupy" does not require the landlord to move from their current living space, into the rental unit, but does require that the landlord hold possession of and keep the rental unit for their use. Therefore, I find the landlord has met the definition of occupy as defined in the Black's Law Dictionary as the landlord has testified under oath and I prefer the testimony of the landlord over that of the tenant.

The tenant's testimony that money is owed by the landlord which the landlord disputed is not relevant to the matter before me as there is no monetary claim before me.

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid. Therefore, **I dismiss** the tenant's application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice issued by the landlord with an effective vacancy date of September 30, 2016. 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 reviewed the 2 Month Notice and find that it complies with section 52 of the *Act*, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant as the effective vacancy date of September 30, 2016 has already passed.

As the tenant's application did not have merit, I do not grant the tenant the recovery of the cost of the filing fee.

In addition, **I dismiss** the tenant's application to assign or sublet the rental unit **without leave to reapply** as the tenancy ended on September 30, 2016 and I find an application to assign or sublet the rental unit is now moot.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed.

The 2 Month Notice issued by the landlord is upheld.

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

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: October 7, 2016

Residential Tenancy Branch