



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the landlords: MNR FF
For the tenant: CNL MNDC OLC

Introduction

The parties submitted cross-applications for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated September 15, 2016 (the “2 Month Notice”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

In addition to the above, on November 8, 2016 an arbitrator joined a separate file, the file number of which has been included on the cover page of this decision to be heard in conjunction with the cross-applications before me as described above. 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.

The tenant, a tenant advocate, the landlords and counsel for the landlords 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 testimony and to make submissions to me.

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

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in the applications before me. In these circumstances the tenant has two files, when combined contain 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, while the landlords' Application is solely related to a monetary claim. I find that not all the claims on the Applications for Dispute Resolution before me are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 2 Month Notice at this proceeding. The balance of the tenant's and the landlords' Applications are dismissed, **with leave to re-apply.**

Issue to be Decided

- Should the 2 Month Notice be cancelled under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2014. Monthly rent of \$650.00 is due on the first day of each month.

The tenant confirmed that she was served on September 15, 2016 with a 2 Month Notice dated September 15, 2016 which has an effective vacancy date of November 15, 2016. The tenant disputed the 2 Month Notice on September 26, 2016 which was within the allowable time limitation under the *Act* of 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."

In support of the 2 Month Notice, landlord M.L. testified that he has been living in the upper area of the home since July 2016 and it is the intention of the female landlord M.M.D-L to return from Ontario when she retires in December from the military to join M.L. and occupy the entire home and no longer be a landlord. The landlords testified that while they plan on opening the one wall separating the upper part of the home from the current rental unit, they do not require permits to remove the one wall and wish to have the home return to the original structure before the rental unit was created by install the wall. Landlord M.M.D-L testified that she is reaching her compulsory retirement age and has been planning to retire in the entire home for three years. Landlord M.M.D-L testified that her 91 year-old mother old lives in the same community

that she will be moving back to from Ontario and that her other sister lives in the community too.

The tenant, who also happens to be a sister of landlord M.M.D-L, claims that she wished to live in the rental unit long-term. The tenant also stated that her mother loaned her sister, the female landlord, \$50,000.00 towards the purchase of the home. There was no dispute by the tenant when the female landlord testified that she has repaid her mother the \$50,000.00 loan towards the purchase of the home.

There was no evidence presented that the tenant had an interest in the rental property that is greater than mere possession of the rental unit by way of a month to month tenancy agreement. The tenant did raise concerns with three other notices to end tenancy having been issued regarding this tenancy, all three of which were cancelled previously. One of the three notices was related to a 2 Month Notice that was cancelled due to a finding that good faith could not be determined by the arbitrator as the property was listed for sale at that time which contradicted the reason stated in the 2 Month Notice. The other two notices were related to 1 Month Notices to End Tenancy for Cause, both of which were cancelled.

Counsel distinguished through testimony of the landlords that the current 2 Month Notice was different from the previous 2 Month Notice by indicating that the property is not for sale and that the landlords fully intend to occupy the entire home for retirement purposes and are no longer interested in being landlords. Counsel also distinguished through testimony of the landlords that while the landlords will be renovating the home the landlords will be occupying the entire home while they renovate the home.

The tenant claims that the most recent plan of the landlords has been brought up in the last six months which the male landlord denied vehemently. The female landlord testified that she has no plans to be a landlord in the future. Counsel reiterated that it is the decision of the landlords on whether they choose to renovate their home once they occupy the entire 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 alleging that the 2 Month Notice was not issued in good faith by referring to three other prior notices to end tenancy all of which were cancelled.

The three prior notices to end tenancy were a 2 Month Notice to End Tenancy for Landlord's Use of Property, and two 1 Month Notices to End Tenancy for Cause.

The reason indicated in the 2 Month Notice includes that the rental unit will be occupied by the landlords, 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]

While the word occupy does not require the landlords to move into the rental unit, it does require that the landlords to hold possession of and keep the rental unit for their use. Therefore, I find the landlords have met the definition of occupy as defined in the Black's Law Dictionary as the landlords have testified under oath that they intend to occupy the entire home and to no longer be landlords by returning the home to the original structure which does not include a rental unit.

I am satisfied that the 2 Month Notice has been issued in good faith and is distinct from the previous 2 Month Notice that involved the rental home being listed for sale at the time the 2 Month Notice was issued and subsequently cancelled. In addition, I have considered that the tenancy was never a fixed-term tenancy and has been a month to month tenancy since the beginning and accordingly, the landlords have the right under the *Act* to decide to no longer be landlords and issue a 2 Month Notice to end the tenancy accordingly which I find is the case before me.

Based on the above and on the balance of probabilities, I find that the landlords have met the burden of proof and I find the 2 Month Notice issued by the landlords to be valid. Therefore, **I dismiss** the tenant's application to cancel the 2 Month Notice. **I uphold** the 2 Month Notice issued by the landlords as I find it is valid. Pursuant to section 53, the effective vacancy date of November 15, 2016 automatically corrects to November 30, 2016 as rent is due on the first day of each month which makes the corrected vacancy effective date November 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 it complies with section 52 of the *Act*, **I must** grant the landlords an order of possession effective **November 30, 2016 at 1:00 p.m.**

Conclusion

The tenant's Application to cancel the 2 Month Notice is dismissed. The 2 Month Notice issued by the landlords is upheld.

The landlords have been granted an order of possession effective November 30, 2016 at 1:00 p.m. The tenancy ends on that date and time. 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: November 21, 2016

Residential Tenancy Branch