



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- a Monetary Order pursuant to section 67 of the *Act* for damages suffered.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties attended the hearing, I confirmed that there were no issues with service. I find that the tenant was served with the 2 Month Notice and the landlord's evidentiary package in accordance with section 88 of the *Act*, as the parties agreed that the landlord's 2 Month Notice and evidence were placed on the tenant's rental unit door on December 18, 2016. The parties confirmed that on January 6, 2017 the tenant personally served the tenant's notice of dispute resolution on the landlord along with her evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

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 recover the filing fee for this application?

Can the tenant recover damages for loss of rent?

Background and Evidence

The landlord testified that this tenancy began on April 1, 2013 and rent was set at \$1,550.00 per month. A security deposit of \$775.00 continues to be held by the landlord.

On December 18, 2016 the landlord stated that he served the tenant with a 2 Month Notice because he intended for his son to occupy the rental unit.

The tenant explained that she did not believe the landlord intended in good faith to house his son in the rental unit. She said that an incident that occurred between the landlord and an occupant of the rental unit triggered the landlord's decision to issue this 2 Month Notice. She stated that she believes the landlord intends to re-rent the unit and is not intent on using the unit for his own use. The tenant noted on her application for dispute resolution that pursuant to section 67 of the *Act* she sought repayment of \$250.00 in damages due to the incident that occurred between her roommate and the landlord.

The landlord responded to the tenant's allegations by explaining that his 21 year old son will be moving into the rental unit in an effort to save for his studies. The landlord testified and provided evidence to the hearing that his son is currently living with his ex-wife in a nearby community; however, it is his son's intention to enroll at a post-secondary institute in September 2017. The landlord explained that his son is intending to save money to pay for this program and needs free accommodation so that he may pay for his schooling. A letter provided as part of the landlord's evidentiary package stated that his son is currently paying rent to live with the landlord's ex-wife.

Analysis- Notice to End Tenancy

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlord intends in good faith to have his son occupy the rental unit.

The tenant questions the intention of the landlord and raised a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that good faith is 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. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Policy Guideline 2 reads in part as follows:

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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The landlord provided written evidence to the hearing in the form of a letter from his ex-wife confirming that their son will not be able to continue living with her, a letter from his son explaining that he hopes to save for school and is anticipating having more room to study in the rental unit of his father's than he presently has at his mother's. Information was also provided from the post-secondary institute explaining the nature of the program.

A notice of the 2 Month Notice was also provided to the hearing. I find pursuant to section 55 of the Act that this Notice is valid.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
(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.

Evidence presented during the hearing was very convincing and believe that the landlord, does in good faith, intend for his son to occupy the rental unit. Therefore, I find on a balance of probabilities that the landlord intends for his son to occupy the rental unit.

The tenant's application to cancel the landlord's 2 Month Notice is dismissed and the 2 Month Notice is valid. The landlord will be granted an Order of Possession pursuant to section 55 of the *Act* for February 28, 2017.

As the tenant was unsuccessful in her application, she must bear the cost of the filing fee.

Analysis – Tenant's Application for a Monetary Order

The tenant sought a Monetary Order for \$250.00 for loss of peace and quiet enjoyment of the property pursuant to section 67 of the *Act*. This figure represents the amount of rent money she had to return to a subletter in her suite. This person was evicted by the landlord on December 18, 2016.

Section 28 of the *Act* describes elements that may be considered regarding loss of quiet enjoyment, stating:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

As this incident involved a confrontation between the landlord and the tenant's subletter, the tenant herself, did not suffer a loss of peace and quiet enjoyment. While I sympathize with the tenant's position of having to re-pay the occupant for the money he had paid for rent, it is the occupant who allegedly suffered loss of quiet enjoyment and would therefore be the occupant's choice to file an application for loss of quiet enjoyment. The tenant's application for a \$250.00 Monetary Order is dismissed.

Conclusion

The tenant's application to cancel a 2 Month Notice is dismissed and the landlord is granted an Order of Possession for February 28, 2017. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Supreme Court of British Columbia.

The remainder of the tenant's application is also 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: February 1, 2017

Residential Tenancy Branch