



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On January 4, 2017, the Tenant submitted an Application for Dispute Resolution asking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property (the Two Month Notice) and for a rent reduction due to restriction of a service..

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they have received each other's evidence. 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.

Preliminary and Procedural Matters

The Tenant's Application includes a request to cancel a notice to end tenancy and a request for a reduction of rent due to restriction of a service. I find that the most important issue to deal with during this proceeding is the notice to end tenancy, and whether or not the tenancy will continue. For disputes to be combined on an application they must be related.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator to dismiss issues with or without leave to reapply. Therefore, I will deal with the Tenant's request to cancel the 2 Month Notice and I dismiss the balance of the Tenant's claim with liberty to re-apply.

The Tenant testified that two of the pages of evidence she submitted to the Residential Tenancy Branch were not provided to the Landlord. The Tenant testified that the two pages contain sensitive medical information that the Landlord does not need to see.

I do not find the two pages of medical information are relevant to my consideration of whether or not the 2 Month Notice issued under section 49 of the Act, is an effective notice, or whether the Notice was issued for a valid reason contained within section 49.

While I acknowledge that the Tenant wants the medical information to be considered towards the hardship she faces, I find that there is no provision in the Act which allows me to consider the hardship that ending a tenancy will present to her.

For the reasons explained above, I assign no weight to the two pages of medical evidence that the Tenant provided to the Residential Tenancy Branch.

During the hearing the parties engaged in a lengthy conversation to settle this dispute under section 63 of the Act; however, an agreement could not be reached.

Issues to be Decided

- Should the 2 Month Notice to End Tenancy be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on February 1, 2016, and is currently a month to month tenancy. Rent in the amount of \$1,240.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$600.00.

The Landlord testified that being a Landlord is difficult and the Landlords have decided that they do not wish to be Landlord's anymore. The Landlord testified that he has decided to use the rental unit as storage, a workshop, and desk space.

The Landlord testified that he has no intention to re-rent the rental unit.

The Landlord issued the Tenant a 2 Month Notice dated December 30, 2016 . The reason for ending the tenancy on the Notice states:

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 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that she received the 2 Month Notice on December 31, 2016.

The Tenant's advocate submitted that the Landlord is frustrated with the Tenant regarding a laundry room issue and is unfairly evicting the Tenant.

The Tenant's advocate suggests the Landlord is acting in bad faith. The Tenant provided documentation surrounding a dispute about use of the laundry room.

The Tenant also submitted documents regarding housing and rental vacancy rates in the Victoria area but did not specifically refer to these documents during the hearing.

The Tenant's advocate submitted that if the 2 Month Notice is upheld, the effective date of the Notice should be extended until September 2017, under section 66(1) of the Act, because of the disability and exceptional circumstances of the Tenant.

Section 51 of the *Act* states that a Tenant who receives a 2 Month Notice 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.

If steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Analysis

Residential Tenancy Branch Policy Guideline #2 states that the *Act* allows a Landlord to end a tenancy if the Landlord intends in good faith to move in, or allow a close family member to move into the unit. A claim of good faith requires honesty of intention with no ulterior motive. The Landlord must intend the use the rental unit for the purpose stated on the Notice.

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

The Tenant disputed the Notice on January 4, 2017, which is within the required timeframe to dispute the Notice.

The Notice indicates 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 he intends to occupy the unit and has no intention to re-rent the unit.

While I acknowledge there is a dispute regarding the use of the laundry facility, this does not prove that the Landlord does not intend to use the rental unit for the purpose stated in the 2 Month Notice.

I find the Landlord's testimony to be straight forward and honest. The Landlord is feeling stressed by having a Tenant and does not want to be a Landlord any longer. The Landlord testified that he will not be re-renting the rental unit. The Landlord testified he will use the suite for storage, a workshop, and desk space.

There is insufficient evidence from the Tenant to establish that the Notice was issued in bad faith. I find that the Landlord has the right to cease being a Landlord if that is his honest intention. I do not find the Landlord has a hidden motive. The Landlord's testimony was clear that being a Landlord does not work for them. I am satisfied that the Landlord intends to use the rental unit for the purpose stated in the Notice.

I find that section 66(1) of the Act permits me to extend a time limit in exceptional circumstances; however, I do not find it applies towards an extension of an effective date of a Notice. Section 66 (1) allows an extension of time to dispute a notice to end tenancy in certain circumstances and only when an extension is agreed to by a Landlord.

While not submitted by the Tenant, section 68(2) of the Act states that the Director may, in accordance with the Act, order that a tenancy ends on a date other than the effective date shown on a notice to end tenancy. I find that the effective date of a Notice to end tenancy may be amended; however, not for the reasons submitted by the Tenant's advocate. I find that any decision to extend the effective date of a Notice to end tenancy must be in accordance with the Act. There is no provision in the Act that permits an extension of an effective date of a Notice to end tenancy on medical grounds or grounds of hardship.

I dismiss the Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated December 30, 2016.

The request to extend the effective date of the 2 Month Notice until September 2017, due to the exceptional circumstances of the Tenant is dismissed.

Pursuant to section 51 of the Act, the Tenant is entitled to compensation from the Landlord in the amount of one months' rent.

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 March 1, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 30, 2016, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on March 1, 2017. The Tenant must be served with the order of possession.

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 06, 2017

Residential Tenancy Branch