



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, O

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to cancel the landlord's Two Month Notice To End Tenancy for Landlord's Use of Property (the "Two Month Notice");
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- an order for unspecified other relief; and
- recovery of the tenant's filing fee for their application from the landlord.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the tenant's application I have determined that I will not deal with all the dispute issues the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the tenant's request to cancel the Two Month Notice; and to recover their filing fee. I dismiss the balance of the tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issues to be Decided

- Is the tenant entitled to cancellation of the landlord's Two Month Notice?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background and Evidence

The undisputed evidence established that the tenant entered into a one year fixed term tenancy starting August 1, 2012 and ending July 31, 2013. The tenancy was then extended for another one year fixed term ending July 31, 2014. Thereafter, the tenancy has continued on a month to month basis. Rent in the amount of \$1,300.00 is due on the first day of each month. The tenant provided a security deposit in the amount of \$650.00 on August 1, 2012.

The landlord testified that the Two Month Notice was sent to the tenant by registered mail on February 8, 2017. The tenant testified that he received a copy of the Two Month Notice on February 23, 2017. The landlord's reason for wanting to end the tenancy set out on the Two Month Notice is that the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord testified that he will be occupying the rental unit. The landlord testified that he works downtown close to where the rental unit is located. The landlord testified that he has a home outside of the city center where he resides with his wife and children. The landlord testified that it is his intention to stay in the rental unit during the week and return home to his family on weekends. The landlord testified that by staying in the rental unit during the week, it will reduce the stress of commuting every day to work. The landlord testified that he has worsening health issues which include back problems and diabetes. The landlord submitted chiropractic receipts. The landlord testified that the stress of the commute from his home is impacting his health issues. The landlord testified that by staying in the rental unit he could reduce his daily commute of up to 1 hour and 15 minutes each way to 15 to 20 minutes.

The tenant testified that he does not believe that the landlord intends on occupying the rental unit. The tenant argued that it is highly unlikely that the landlord genuinely wants to end the tenancy for the stated reasons. The tenant testified that he believes that the landlord wants to find new tenants so that he can raise the rent higher than the allowable rent increase under the *Act*.

The tenant challenged the landlord's claims that the landlord's health issues were worsening giving rise to the need to reduce the stress of the daily commute. The tenant argued that the chiropractic visits shown on the receipts submitted by the landlord establish that the landlord's visits to the chiropractor have decreased over time and not increased. The tenant argued that for this reason the receipts don't substantiate the landlord's claims that his health is worsening.

The tenant challenged the landlord's claims that he would be saving a significant amount of commuting time by occupying the rental unit during the week. The tenant testified that the

landlord's commute from home to work is only 40 minutes each way. The tenant testified that he was relying on google for the commute time. The tenant testified that the landlord could reduce his commute time by driving to work instead of using the Park and Ride.

The landlord's response to the points raised by the tenant about the commute was that the rush hour traffic adds to the time such that it is not a 40 minute commute. The landlord also responded by indicating that the daily rush hour traffic is mental torture.

The tenant testified that he received an email from the landlord on January 31, 2017 informing the tenant that the landlord was giving the tenant one month's notice to vacate the rental unit without stating any reason. The tenant indicated that he didn't respond to the email notice. The tenant testified that after the landlord didn't receive a response to his email, the landlord served the tenant with the Two Month Notice. The tenant argued that the landlord made up the reason stated in the Two Month Notice as the landlord did not refer to any reason for ending the tenancy in his email.

In response, the landlord indicated that he issued the Two Month Notice after contacting the Residential Tenancy Branch asking about what he should do as the tenant hadn't responded to his email. The landlord testified that it was at this time he learned what steps he was required to take under the *Act*. The landlord testified that his intention to occupy the rental unit was the reason he sent the email giving notice to end the tenancy even if he didn't refer to it in the email.

The tenant testified that he did not believe that the landlord honestly intended to occupy the rental unit as it did not make any financial sense for the landlord to give up the rental income. The tenant argued that there was no possible way the landlord could afford to lose rental income given that there is a mortgage registered on title.

The landlord testified that he and his wife are professionals who earn significant incomes to be able to afford the expenses associated with the rental unit without collecting rent. The landlord testified that his health was more important than money and that he and his wife were very financially stable.

The tenant testified that during the tenancy the landlord sent three emails informing the tenant that the landlord wanted to increase the rent by amounts that the tenant indicated fell well above the allowable rent increase for that year. The tenant submitted copies of the emails which are dated June 21, 2014, November 19, 2014 and December 1, 2015. The tenant argued that these emails establish that the landlord's true motive for ending the tenancy is financially driven. The tenant argued that the landlord intends on renting the unit to new tenants so that he can increase the rent by an amount that he would not be able to collect under the existing tenancy agreement.

The undisputed evidence established that the landlord did not collect the proposed rent increases that were requested in the emails. Furthermore, the landlord never issued a Notice of Rent Increase and the tenant's rent was never raised during the tenancy.

The tenant testified that he believed that the landlord was advertising the rental unit on craigslist asking for a higher rent. The tenant submitted a copy of the ad showing a photo of a unit listed at the same address as the tenant's building. The ad did not identify the unit number. The landlord denied the tenant's allegation indicating that the unit in the advertisement was not his unit. The tenant acknowledged that it was speculation on his part that it was this landlord's ad.

The tenant is seeking to cancel the Two Month Notice.

The tenant is seeking to recover the \$100.00 filing fee for their application from the landlord.

Analysis

Based on the undisputed documentary evidence and testimony of the landlord and tenant provided during the hearing, and on the balance of probabilities, I find the following.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move into the rental unit, or allow a close family member to move into the unit.

Policy Guideline #2 describes the 'good faith' requirement as requiring 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.

I find that there is sufficient evidence to satisfy me that the landlord honestly intends to occupy the unit himself. I accept the landlord's testimony that he intends to occupy the rental unit during the week so as to reduce the daily commute to and from work.

I do not find that it is necessary to make any determinations as to the landlord's state of health or the actual commuting time as I accept that commuting daily in rush hour traffic whether it is 40 minutes or 1 hour and 15 minutes can be stressful regardless of one's health condition. Therefore, I find that the landlord's explanation for wanting to reduce the commute time is a reasonable one.

Although the tenant has done a thorough job of disputing the landlord's reason for wanting to occupy the unit, I find that the landlord has provided a reasonable response to each of the points raised by the tenant. For this reason, I find that there is insufficient evidence to persuade me that the landlord has an ulterior motive for ending the tenancy.

I do not find that the three emails sent to the tenant by the landlord seeking to increase the rent are sufficient to establish that the landlord's motive to end the tenancy is financially driven by a desire to collect higher rent. In making this finding I have taken into consideration the fact that

the landlord never issued a Rent Increase to raise the tenant's rent since the start of the tenancy on August 1, 2012.

I do not find that the landlord advertised his unit for a higher rent as alleged by the tenant. In making this finding I have taken into consideration the fact that the landlord denied the allegation and the tenant acknowledged that this was mere speculation.

I do not find that there is a basis for concluding that just because the landlord did not state a reason for ending the tenancy in the landlord's email notice dated January 31, 2017, that the landlord made up the reason set out in the Two Month Notice.

I find that the Two Month Notice complies with s.52 of the *Act* and that the landlord served the Two Month Notice in accordance with the *Act*.

Based upon the foregoing, I find that the tenant is not entitled to cancellation of the Two Month Notice and I uphold the Notice to end tenancy. Therefore, I dismiss the tenant's application.

If the landlord does not use the rental unit for the purpose stated on the Two Month Notice, the tenant is entitled to make an application for compensation pursuant to section 51 of the *Act* for double the monthly rent payable under the tenancy agreement.

Pursuant to section 55 of the *Act*, when the landlord's Notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's application, I am required to grant an order of possession.

Section 49(2) of the *Act* states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than two months after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation.

The tenant indicated that he received the Two Month Notice on February 23, 2017 by registered mail. Therefore, in accordance with sections 49(2) and 53 of the *Act*, I find that the earliest effective date of the Two Month Notice is April 30, 2017, and not April 9, 2017. Therefore, I find that the landlord is entitled to an order of possession to take effect on April 30, 2017.

As the tenant's application was not successful, I find that the tenant is not entitled to recover the filing fee for their application from the landlord.

Conclusion

I uphold the landlord's Two Month Notice and the tenancy will end.

The tenant's application is dismissed and therefore the tenant is not entitled to recover the filing fee for their application from the landlord.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **April 30, 2017**, which must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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: March 31, 2017

Residential Tenancy Branch