



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL CNL O AS OLC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Landlord's Use pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for: cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Attendance and Service of Documents Prior to this Hearing

The tenant attended the hearing as did the landlord's agent. Both parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and two additional evidence packages.

Prior to the beginning of the substantive hearing, the tenant submitted that he was not provided with all of the materials that the landlord relies on in her application. Specifically, the tenant claimed that he was not provided with a copy of the landlord's Application for Dispute Resolution. The tenant stated that he understood the nature of the landlord's Application for Dispute Resolution and that she was seeking an Order of Possession. The tenant also claimed that he was not provided with a Residential

Tenancy Branch Fact Sheet. The tenant submitted that the landlord was required to provide him with a Residential Tenancy Branch Fact Sheet. Given the other information provided by the tenant and given that there have been two previous hearings attended by these parties, the tenant conceded that the Fact Sheet was not necessary for him to proceed. I am confident that the tenant understands both the landlord's application, as well as the process and procedure and has been provided, with notice, of all the information required to proceed with this hearing.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled or is the landlord entitled to an Order of Possession for the rental unit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to an order requiring the landlord to comply with the *Act* and/or an order allowing the tenant to assign or sublet the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on November 1, 2014 as a fixed term tenancy of one year and continued on a month to month basis at the expiry of the fixed term. The landlord also submitted a copy of the residential tenancy agreement. As of the date of this hearing, the tenant continues to reside in the rental unit paying a monthly rent amount of \$1600.00 on the 1st of each month. The landlord continues to hold the tenant's security deposit of \$800.00 paid prior to the outset of this tenancy (September 3, 2017).

The landlord issued a 2 Month Notice to End Tenancy on June 26, 2017. The notice to end tenancy was served personally to the tenant. The landlord's 2 Month Notice, provided as documentary evidence prior to this hearing, identified the following reason for seeking an end to this tenancy: that the rental unit will be occupied by the landlord.

To support her claim that the landlord intends to occupy the unit, the landlord's agent testified that the landlord is 71 years old and that she is on a waitlist for hip surgery. The landlord's agent testified that the landlord's current home has stairs and multiple levels. Therefore, she testified, the landlord intends to renovate the rental unit for accessibility and then move in to the tenant's current rental unit. The landlord's representative testified that since the rental unit is smaller and does not require the use of stairs, it is a good solution for the landlord. She referred to the doctor's letter within the landlord's

evidence for this hearing. The letter states that the landlord is awaiting a meeting with a surgeon regarding a hip replacement. The letter also states that the landlord should not go up and down stairs. The landlord also submitted a letter from a contractor dated March 10, 2017 was also submitted as evidence for this hearing. The letter indicates that renovations to the unit for safety and accessibility will take approximately 8 weeks.

The tenant submitted that the landlord has issued the 2 Month Notice to End Tenancy in bad faith. The tenant submitted that his digital evidence proves that the landlord has bad faith in issuing the 2 Month Notice. The tenant's digital evidence illustrates a mainly unintelligible conversation between the two parties. The tenant submitted that the landlord has become unhappy that he is subletting the downstairs. He testified that he does not know why she is unhappy but that he believes this is the reason that she wants to end his tenancy.

The tenant also submitted that the landlord's bad faith in issuing this 2 Month Notice is illustrated in the issuance of a previous notice as well as the previous decision with respect to an end to this tenancy. The tenant argued that the previous applications by the landlord were dismissed and considered misleading. The previous decisions provided with respect to this tenancy concluded as follows;

1. On an application by the tenant to cancel a Notice to End Tenancy, determination was made that no Notice to End Tenancy had been issued and leave was granted for the tenant to reapply to allow him to sublet his rental unit.
2. On an application by the tenant to cancel a Notice to End Tenancy (a 2 Month Notice dated March 27, 2017), the tenant's application was granted. The reason for issuing the notice (for the landlord to move in after renovations) was identical to the reason provided by the landlord at this hearing. However, on the previous 2 Month Notice, the landlord had indicated that she had all necessary permits and intends to renovate. The arbitrator found that the landlord intends to occupy the unit and therefore her notice to end tenancy could not stand. The arbitrator wrote that, "The landlord remains at liberty to serve the tenant with another Notice that provides the ultimate reason for ending the tenancy."

On previous hearing dates, the tenant had also made submissions that the landlord's evidence be disallowed as he had not received a complete evidence package.

The tenant testified that the remainder of his application, beyond the application to cancel the landlord's 2 Month Notice to End Tenancy is with respect to his right to sublet

the downstairs unit. The tenant refers to the addendum agreement that states the tenant has been given the permission of the landlord to sublet. The tenant submitted that, if his tenancy is to continue, his tenancy agreement should continue to allow him to sublet the basement unit.

Analysis

While I have turned my mind to all the documentary evidence, e-mail correspondence, supporting letters, digital evidence and the testimony of the parties, not all details of the respective submissions and/or arguments of each party are reproduced here. The principal aspects of both party's claim and my findings around each are set out below.

The tenant applied to cancel the 2 Month Notice on June 29, 2017 (within fifteen days of receiving the 2 Month Notice). When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 2 Month Notice to End Tenancy, the landlord claimed that that the rental unit will be occupied by the landlord.

As evidence that she intends to reside in the rental unit, the landlord submitted a letter from a doctor dated August 24, 2017 that states going up and down stairs is painful for the landlord and that she is waiting to see a surgeon regarding a hip replacement. The doctor's note states that it is best the landlord avoid going up and down stairs. A letter from the landlord's contractor was also submitted as evidence for this hearing. The letter indicates that renovations to make the unit more accessible will take approximately 8 weeks.

The tenant argues that the landlord is not acting in good faith in issuing the notice to end tenancy. He argued that the landlord doesn't like the tenant subletting and therefore is attempting to end his tenancy. He did not provide any other reason or ulterior motive that the landlord might have to end his tenancy.

I find that the landlord has provided sufficient evidence to show that she issued a 2 Month Notice to the tenant because she intends to reside in the rental unit herself. She provides a reasonable explanation entirely consistent with the explanation provided at the last hearing that, due to her age and health, she requires a home where there are no stairs and where she can get around easily. I accept the testimony and documentary evidence of the landlord in support of her application for an Order of Possession. I dismiss the tenant's application to cancel the 2 Month Notice to End Tenancy. The tenancy shall end. The landlord is entitled to an Order of Possession dated September 30, 2017.

The tenant also sought an order that the landlord continue to allow him to sublet his rental unit. **As the tenancy shall end, I find that this application is moot.**

As the tenant was unsuccessful in his application, I find that he is not entitled to recover his filing fee. I find, as the landlord was successful in her application, that she is entitled to recover her \$100.00 filing fee from the tenant. Pursuant to section 72 of the Act, the landlord may retain \$100.00 from the tenant's security deposit. The remaining security deposit (\$700.00) will be addressed in accordance with section 38 of the Act.

Conclusion

I dismiss the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy. The landlord is provided with a formal copy of an Order of Possession effective September 30, 2017. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is granted a \$100.00 monetary order for the filing fee for this application. I allow the landlord to retain \$100.00 from the tenant's security deposit in order to satisfy the filing fee cost.

I dismiss the tenant's application for an order requiring the landlord to comply with the *Act* and an order allowing the tenant to assign or sublet the rental unit as well as the tenant's application to recover the filing fee for this application from the landlord.

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: September 13, 2017

Residential Tenancy Branch