



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OLC FF

Introduction

Both parties, the landlord's daughter as representative (hereinafter called 'the landlord') attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated June 30, 2017 to be effective August 31, 2017 was delivered under the tenant's door on June 30, 2017 and received by the tenant in early July. I find it is deemed to be received on July 3, 2017 pursuant to section 90 of the Act. As a result, I find the effective date on the Notice is automatically corrected to September 30, 2017 pursuant to section 53 of the Act as a two month Notice to End Tenancy must give a full two month's notice and according to section 49(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To order the landlord to comply with the Act; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need in good faith to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief?

Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Is the tenant entitled to an Order that the landlord comply with the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. It was a contentious hearing and I had to remind the

parties to address the main issue. The undisputed evidence is that the tenancy commenced in 2013 with some fixed term leases but it is now a month to month tenancy, rent is \$2380 a month and a security deposit of \$1200 was paid. The landlord served a Notice to End Tenancy for landlord's use of the property for herself or a close family member to occupy the unit.

The landlord gave evidence that her son wanted to move into the unit. She agreed that there had been a difficult relationship between the tenant and the landlord. During a recent dispute the mother was suffering extreme stress and told the tenant by email in a heated moment that she would likely sell the unit or move in herself. After this event, they had a family conference and her son, who is living with her, said he would prefer that she not sell the unit and allow him to move in. Although he has another unit in the city, it is smaller and rents for more than this unit and he has a long term lease with those tenants. He thought it would be beneficial to rent the subject unit at this rate and obtain a larger area so he can have a home office. The landlord served the two month Notice to End Tenancy to allow her son to occupy the unit. As evidence of his good faith intention, they provided communications with telephone, internet, utility services requesting a change of name and also Form K signed by the son for the strata complex.

The tenant alleges the landlord is acting in bad faith because he disputed an illegal rent increase. Apparently the landlord informed him by email of a rent increase and he objected and wanted it on the legal form. He said it was no more than the legal increase under section 43 but he understood it had to be a formal notice served 3 months in advance. He has not been paying the increase and I advised him that he did not have to do it unless he received the legal notification.

Included with the evidence are a copy of the Notice to End Tenancy, many angry, somewhat abusive emails from both parties and disputes over the increase of rent. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the landlord's intention in serving the Notice to End Tenancy for landlord's use of the property. While it is true, the parties had a rental increase dispute and exchanged many angry emails, I find it credible that the landlord was experiencing extreme stress and contemplated selling the unit to relieve her stress. This is supported by her email at the time. I find it credible that she had a family conference and her son, who is residing with her, said he would prefer to occupy the unit as his investment unit downtown yields more rent, is on a long term lease and is smaller. He wants enough room for a home office. I found the landlord's evidence was given in a straightforward, honest manner and was consistent with other communications by email.

Although I realize it is difficult for this young family to move, I find section 49 of the Act permits a landlord to legally end a tenancy if the landlord or a close family member (in this case, her son, intends in good faith to occupy the rental unit. For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on September 30, 2017 as automatically corrected under section 53 of the Act.

The tenant requested confirmation that he is entitled to one month's free rent. I confirmed that he would be entitled to a refund of September's rent if he has already paid it and also confirmed he is not liable to pay a rent increase that was not served on the approved form under section 43 of the Act. I advised him to consult section 38 of the Act about his right to return of the security deposit. He asked about Appeal rights and I told him he can request a Review of my Decision but it must be done as soon as he receives the Decision; if he is not satisfied with the results of a Review, he has a right to appeal to the Supreme Court of BC for Judicial Review.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 30, 2017 (as corrected). An Order of Possession is issued to the landlord effective September 30, 2017. I find the tenant not entitled to recover filing fees due to lack of success.

I HEREBY ORDER THE LANDLORD to comply with the Act as follows:

Pursuant to sections 49 and 51 of the Act, to refund rent for September 2017 to the tenant. If the cheque was not cashed, to return the cheque instead.

To only increase rent in accordance with the legislation, sections 42 and 43, which requires a three month Notice of Rent Increase in the approved form.

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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