



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL ERP MNR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an Order for the Landlord to complete emergency repairs for health or safety reasons, and monetary compensation for emergency repairs already completed.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom attended at the scheduled time, ready to proceed. Both parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the request of the Tenant, a copy of the decision will be mailed to their address as shown on the Application. At the request of the Landlord, a copy of the decision and any Order of Possession issued will be sent to them at the e-mail address provided in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing the Tenant withdrew their Application for monetary compensation for emergency repairs already completed as they stated that the issue had already been resolved. The Tenant remains at liberty to reapply.

The Tenant testified that they did not receive the Landlord’s evidence and the Landlord confirmed that they did not exchange their documentary evidence with the Applicant prior to the hearing.

The Rules of Procedure state under section 3.15 that the Respondent must ensure evidence that they intend to rely on at the hearing is served on the Applicant and submitted to the Residential Tenancy Branch (the "Branch") as soon as possible and in any event, must be received by the Applicant and the Branch not less than seven days before the hearing.

As the Landlord did not exchange their evidence with the Tenant prior to the hearing, I find that it would be unreasonably prejudicial to the Tenant and a breach of both the principles of natural justice and the Rules of Procedure to accept it for consideration in the hearing. As a result, the Landlord's documentary evidence was excluded from consideration.

Issue(s) to be Decided

Is there a reason to cancel the Two Month Notice under the Act?

If so, is the Tenant entitled to an Order for the Landlord to make emergency repairs?

If the Tenant is not successful in seeking to cancel the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

Although evidence and testimony was provided by both parties in relation to the tenancy in general and other matters listed on the Tenant's Application, only the evidence and testimony relevant to my decision has been summarized and discussed below.

The parties agreed that the month-to-month tenancy began approximately four years ago and that rent in the amount of \$800.00 is due on the first day of each month.

The Landlord testified that they are recently divorced and need to vacate their current accommodation, which they share with their previous spouse. The Landlord testified that as a result, they served the Tenant with a Two Month Notice as they cannot afford to rent alternate accommodation and need to move back into the rental unit.

The Two Month Notice in the documentary evidence before me, dated August 31, 2017, has an effective vacancy date of October 31, 2017, and gives the following reason for ending the Tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member.

The Tenant testified that they have taken care of the property for many years in the absence of the Landlord and stated that it is their understanding that the Landlord owns other properties. As a result, the Tenant stated that the Landlord should move into another property instead of having her move out. When asked, the Tenant testified that she has no evidence or reason to

believe that the Landlord does not intend to occupy the rental unit as stated in the Two Month Notice.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the Two Month Notice on August 31, 2017, the date they acknowledged receiving it.

Section 49 of the *Act* states the following with regards to ending a tenancy for Landlord's use of property:

Landlord's notice: landlord's use of property

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they intend to occupy the rental unit and there is no documentary evidence or testimony before me to suggest that the Landlord does not intend, in good faith, to occupy the rental unit. As a result, the Tenant's Application to cancel the Two month Notice is dismissed.

As the Tenant's Application is dismissed, I am required under section 55 of the *Act* to grant the Landlord an Order of Possession if the One Month Notice complies with section 52 of the *Act* which states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

As the One Month Notice issued by the Landlord is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, the Landlord is entitled to an Order of Possession. As the effective date of the One Month Notice has passed and both parties agreed that rent for November 2017, was paid, the Order of Possession will be effective at 1:00 P.M. on November 30, 2017.

Although testimony was provided by both parties in the hearing regarding the other reasons for which the Application was filed, as I have already found above that the Tenancy is ended, I have not made any findings of fact or law in relation to these matters.

Conclusion

The Tenant's Application is dismissed without leave to reapply and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective at **1:00 P.M on November 30, 2017, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 21, 2017

Residential Tenancy Branch