



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, FF

Introduction

This hearing was convened in response to an application by the tenant filed September 27, 2017 under the *Residential Tenancy Act* (the Act) to cancel or set aside a 2 Month Notice to End Tenancy for Landlord's Use, and to recover the filing fee.

The landlord testified they did not receive the tenant's Notice of Hearing and Application package seeking to dispute the Notice to End. The tenant testified they believed that the Branch would send the landlord all they required. None the less, the landlord found out from another tenant of the applicant's application and contacted the Branch to obtain access information for this hearing and also sent the tenant their evidence. The tenant acknowledged receiving the landlord's evidence on November 30, 2017. The tenant also acknowledged they did not have evidence to send the landlord. I've taken into consideration the landlord's acknowledgement they have not been prejudiced by lack of the tenant's application or Notice of Hearing. As a result of all the above, pursuant to Section 71(2)(c) I determined that the landlord was sufficiently served for purposes of the Act and the hearing proceeded on the merits.

Both parties appeared in the hearing and had an opportunity to be heard. The landlord was accompanied by their agent. Each party was given full opportunity to present all relevant evidence and provide testimony in respect to the application and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Only admissible evidence relevant to the issues in this matter has been described in this Decision.

Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy for Landlord's Use dated September 25, 2017 valid?

Is the tenant entitled to recover their filing fee?

Background and Evidence

The tenancy began in 2012. The parties agree the payable monthly rent is \$1010.00 due on the first day of the month. The parties agree the tenant received a 2 Month Notice to End Tenancy for the landlord's use signed by the landlord dated September 25, 2017. I have benefit of a copy of the Notice to End in the approved form, with a stated effective date of November 30, 2017. The reason stated on the Notice is the provision prescribed by Section 49(3) of the Act;

The tenant does not dispute the landlord's good faith intention for issuing the Notice to End. Rather, the tenant disputes the landlord's timing for the Notice. The tenant argued their frustration with the inconvenience and impracticality posed by the landlord's Notice in respect to their plans to immigrate to Europe. The tenant testified they need additional time to find short term accommodations as they await authorization to immigrate. The tenant offered the landlord an extension of 3 months which was not agreeable to the landlord whom offered the end of December 2017 as the latest possible time, due primarily to the stress the family relationship is having on their children.

The landlord provided oral and document evidence that their husband will be occupying the rental unit as soon as possible due to their marital separation. The landlord submitted proof from their lawyer in support of their family law matters and the couple's plans to separate.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

I find that Section 49 of the Act permits a landlord to end a tenancy if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of either. In this matter the evidence is that one of the spouses is the close family member who

will occupy the unit. Further is that the tenant does not dispute the stated purpose of the landlord, which is that they will do as the landlord has stated in the Notice to End.

I find that the Act permits a landlord to issue a 2 Month Notice for Landlord's Use if in good faith they personally or by prescribed family extension intend to occupy the rental unit. While I accept, understand and wholly appreciate the tenant's frustration I find the evidence in this matter supports that the landlord truly intends, in good faith, to do as they said on the Notice to End. I also find that the landlord's Notice to End complies with Section 52 of the Act and is in the approved form. As a result I find the landlord's Notice to end is valid therefore I must uphold the landlord's Notice.

Section 55(1) of the Act provides that if a tenant's application to dispute a Notice to End Tenancy is dismissed or the landlord's notice is upheld I must grant the landlord an Order of Possession. In relevant part Section 55 states;

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's Notice to End for Landlord's Use of Property with an effective date of November 30, 2017 complies with the Act and as a result of upholding the landlord's Notice I must grant the landlord an Order of Possession. In this matter the landlord did not object to an extension to December 31, 2017 therefore I will so Order.

I grant the landlord an Order of Possession effective **December 31, 2017**. This Order must be served on the tenant. If necessary, this Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant's application effectively is dismissed.

Conclusion

The landlord's Notice to End is upheld. The tenant's application is dismissed.
The landlord is given an Order of Possession pursuant to Section 55(1) of the Act.

This Decision is final and binding.

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: December 13, 2017

Residential Tenancy Branch