



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNL RP FF
Landlord: OPL FF

Introduction

This hearing, held via teleconference on December 6, 2017, dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant applied for an order:

- To cancel of the Landlord’s Notice to End Tenancy for Landlord’s Use of Property (the Notice);
- To the landlord to make repairs to the rental unit pursuant to section 33; and,
- To recover the filing fee for this application.

The Landlord cross applied for:

- An order of possession based on the Notice; and,
- to recover the filing fee for this application

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony. Neither party raised any issues with respect to service of either of the Application Packages. Both parties confirmed receipt of each other’s documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice to End Tenancy and the continuation of this tenancy is not sufficiently related to the Tenant's claim for the Landlord to make repairs to the unit. The parties were given a priority hearing date in order to address the question of the validity of the Notice.

The Tenant's request for repairs is unrelated in that the basis for it rests largely on facts not relevant to the question of whether there are facts which establish the grounds for ending this tenancy as per the Notice. I exercise my discretion to dismiss this portion of the Tenant's application. I grant the tenant leave to re-apply for this other claim at a later time, if necessary. However, this does not extend any statutory deadlines that must be adhered to.

Both parties agree that the Tenancy started in August of 2017. Both parties acknowledged that they signed a Tenancy Agreement prior to the Tenant moving in. However, neither party was able to locate the copy of the signed Tenancy Agreement. Both parties appear to have lost or misplaced their copies of this document.

The parties disagree on the terms of the Tenancy Agreement. The Tenant testified that he signed a one year fixed term lease, beginning in August of 2017. The Landlord testified that the tenancy was always month-to-month, and there was no fixed term.

Following the end of the hearing, I provided both parties the opportunity to submit their written copy of the Tenancy Agreement by December 18, 2017, at 9 am. I made it clear that if I did not receive this document I would proceed to make my decision in the absence of it. Both parties wrote in to say that they could not locate their copy of the agreement. As such, I have proceeded to make my decision in the absence of this document.

The definitions of the Act require a fixed term tenancy to specify the date on which the tenancy ends. In the absence of evidence to support that the tenancy was for a fixed term, I find the tenancy is periodic in nature, and is on a month-to-month basis.

Issues(s) to be Decided

- Is the tenant entitled to have the landlord's Notice cancelled?

- If not, is the landlord entitled to an Order of Possession?
- Which party is entitled to recover the filing fee for this application?

Background and Evidence

The Tenant acknowledged receiving the Notice on September 13, 2017. The Notice lists the effective date as November 30, 2017. The Landlord issued the Notice for the following reason:

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

The Landlord stated that when they first rented the house to the Tenant, in August of 2017, it was his intention to live in a remote location in another province. The Landlord stated that, although the Tenant recently moved into the rental unit in August of 2017, plans changed when he got a call from his father. The Landlord stated that his father is going blind, and is losing his eyesight. The Landlord further stated that he recently found out that his father's eyesight was worse than expected. As such, the Landlord stated that he made the decision to move back into the rental house so that he could be closer to his father and help care for him. The Landlord stated that his original plan was to be away for longer, but his father's eyesight has forced him to change plans, and move back into the rental unit.

The Landlord provided a letter from his father, reiterating that he has vision problems and that he will be relying on his son (the Landlord) for some assistance, as needed. In his letter, the Landlord's father indicates that he is waiting for space in an assisted living facility, but in the meantime, he is happy to have his son closer to home.

The Tenant stated that the Landlord is acting in bad faith with respect to the Notice. The Tenant stated that he does not believe that the Landlord actually intends to occupy the rental unit because the Notice was issued after discussions about repairs that needed to be made.

The Landlord stated that, despite what the Tenant is alleging, there are real concerns with his father's health, and their plans changed. The Landlord agrees that the timing of all this is unfortunate. The Landlord further stated that there was a period of time, where he was trying to figure out what to do with his living situation, his father's health, and where he would be living, so he did not openly communicate with the Tenant everything that was happening with his father. He did not feel he had to explain any of this until he decided to issue the Notice.

The Tenant stated that he finds it odd that the Landlord did not bring up the medical issues regarding his father, despite having conversation with him on other topics. The Landlord acknowledged that he did not openly share everything and said he was hoping the Tenant would volunteer to move out, so that he didn't have to issue a formal Notice, in the end.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

The Landlord has testified that he intends to occupy the rental unit so that he can be closer to his father, whose medical condition has recently gotten worse. In this case, I find the Landlord has provided a reasonable explanation as to why he needs to occupy the rental unit and the basis for the Notice. Further, the Landlord provided a supplemental letter from his father summarizing his vision problems and his need for some support. I acknowledge that there were some heated discussions about repairs to the rental unit, and that this impacted the relationship between the Landlord and the Tenant. The Tenant finds the timing of the Notice suspicious, given his interaction with the Landlord leading up to the issuance of the Notice. However, I find the Tenant has not sufficiently shown that the Landlord does not actually intend to occupy the rental unit or that the basis for the Notice is not valid.

I find the Landlord has sufficiently demonstrated the basis for the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. I find that the Notice complies with the requirements of form and content. The landlord is entitled to an order of possession effective **December 31, 2017, at 1pm.**

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I authorize that he be allowed to retain \$100.00 from the Tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

I authorize that the Landlord be allowed to retain \$100.00 from the Tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee.

The Landlord is granted an order of possession effective **December 31, 2017, at 1pm**, after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: December 18, 2017

Residential Tenancy Branch