



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy and to recover the fee for filing the Application for Dispute Resolution.

The Tenant stated that on October 24, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

On October 18, 2017 the Tenants submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receipt of the evidence, with the exception of the hand-written letter. The documents the Landlord acknowledged receiving were accepted as evidence for these proceedings.

The hand-written letter the Landlord did not acknowledge receiving was read into evidence by the Tenant. The Landlord acknowledged serving this letter to the Tenant on September 17, 2017. As the Landlord acknowledges the letter, it will be considered during this adjudication.

On December 05, 2017 the Landlord submitted evidence to the Residential Tenancy Branch, which included a copy of the Two Month Notice to End Tenancy which is the subject of this dispute. The Landlord stated that this evidence was personally served to the Tenant on December 04, 2017. The Tenant acknowledged receiving this evidence, with the exception of the Two Month Notice to End Tenancy. As the Two Month Notice to End Tenancy was submitted in evidence by the Tenant, I find there is no need to accept the copy that was submitted by the Landlord.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2010.

The Landlord and the Tenant agree that on October 17, 2017 the Landlord personally served the Tenants with a Two Month Notice to End Tenancy for a Landlord's Use of Property, which declared that the Tenants must vacate by January 01, 2018. The reason for ending the tenancy cited on the Notice was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The female Landlord stated that:

- the Notice was served to the Tenant because her mother, her brother, her brother's wife, and her brother's two children intend to move into the rental unit;
- her brother's wife has recently immigrated to the country;
- her brother is currently living in a small rental unit and his current landlord has asked him to move out of that unit;
- her mother is currently living with her; and
- her mother intends to move in with her brother to help raise her grandchildren.

The Landlord and the Tenant agree that on September 17, 2017 the Landlord served the Tenant with a letter, in which the Landlord declared that the rental unit is need for "family members" who are immigrating to Canada.

The Tenant stated that when the Landlord served him with this letter she told him that her sister and brother would be moving into the rental unit. He stated that when she served the letter the Landlord was accompanied by a male and female, who he presumed were her sister and brother.

The Tenant stated that after receiving the letter he emailed the male Landlord and told him that the tenancy could not be ended if a brother or sister wished to move into the

unit. He stated that it was not until after he sent this email that the Landlord told him that his mother was also moving into the rental unit.

The female Landlord stated that on September 17, 2017 she simply told the Tenant her family members were moving into the rental unit and she did not tell the Tenant who was moving into the rental unit.

Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(1) of the *Act* defines a “close family member” as “the individual’s parent, spouse or child” or “the parent or child of that individual’s spouse”. I specifically note that it does not include a brother or sister.

I find that the Tenants have submitted insufficient evidence to refute the Landlord’s submission that her mother intends to move into the rental unit with her brother and his family. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s testimony that on September 17, 2017 the Landlord told him that her brother and sister would be moving into the rental unit or that refutes the Landlord’s testimony that on September 17, 2017 she told the tenant that family members would be moving into the rental unit.

In the absence of evidence that convinces me that the Landlord provided conflicting evidence about who will be moving into the rental unit, I cannot conclude that the Landlord is being untruthful about her mother moving into the unit.

As the Tenants have submitted insufficient evidence to refute the Landlord’s submission that her mother intends to move into the rental unit, I dismiss the Tenants’ application to set aside the Two Month Notice to End Tenancy.

The Landlord and the Tenants are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month’s rent payable under the tenancy agreement.

The Landlord and the Tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two month’s rent payable under the tenancy agreement if steps have not been taken to accomplish

the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

As the Tenants' application to set aside the Two Month Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenants' application is without merit and I therefore dismiss the application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on December 31, 2017. This Order may be served on the Tenants, filed with 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: December 12, 2017

Residential Tenancy Branch