



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's assistant and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the landlord with the Application by way of registered mail sometime on or about November 03, 2017. The landlord confirmed that they received the Application. In accordance with section 89 of the Act, I find the landlord was duly served with the Application.

The tenant testified that they included their evidence with the Application. The landlord stated that they did not receive any evidence. The tenant admitted that they submitted a copy of the tenancy agreement, the Two Month Notice, a Notice of Rent Increase form and text messages exchanged between the landlord and the tenant but only included the copies of text messages with their Application that was served to the landlord.

The landlord maintained that they only received the Application and the notice of this hearing in their registered mail from the tenant.

I find that I will consider the tenancy agreement as this was a document signed between the two parties. I further find that I will consider the Two Month Notice and the Notice of

Rent Increase form as these were documents served to the tenant by the landlord. As the landlord has disputed service of the copies of text messages, I find that I will not consider this piece of evidence.

The landlord testified that they served the tenant with their evidentiary package by leaving it in the mailbox at the rental unit on November 10, 2017. The tenant confirmed that they received the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The tenant testified that they received the Two Month Notice on October 17, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the Two Month Notice.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy commenced on August 10, 2014, with a current monthly rent of \$1,244.00, due on the 10th day of the month. The landlord testified that they currently retain a security deposit in the amount of \$600.00. The tenancy agreement indicates that electricity and heat are included as a part of the rent.

A copy of the landlord's October 17, 2017, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by December 31, 2017, the landlord cited the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord entered into written evidence:

- a copy of a letter dated November 10, 2017, from a doctor indicating that the landlord's son is under his care and that he supports the landlord's intention to move her son into the rental home as it will be beneficial to the landlord's son's psychological condition;

- a copy of a written explanation of the landlord's evidence describing the circumstances surrounding her decision to issue the Two Month Notice to the tenant;
- copies of medical reports and other documents showing that the landlord's son suffered injuries to his left knee from a work related incident and an injury to their right ankle due to a motor vehicle accident; and
- a copy of a letter from the landlord's assistant (the landlord's mother) confirming the circumstances surrounding the landlord's son.

The landlord testified that a series of unfortunate events has negatively impacted her son's life physically and psychologically. The landlord stated that she has been suffering financial hardship due to helping her son and the increasing costs of utilities at the rental unit. The landlord submitted that she proposed to change the terms of the tenancy agreement, by mutual agreement with the tenant, to remove the inclusion of utilities for electricity and heat as a part of the monthly rent with a verbal promise that she would not raise the rent for the year.

The landlord stated that the tenant refused this proposal and when the landlord contacted the Residential Tenancy Branch (RTB) for options, she became aware of the option to issue a Two Month Notice which would allow for her son to live in the rental unit. The landlord testified that she discussed the idea of her son living by himself in the rental unit with her son's psychologist and that they agreed that it would be beneficial to her son's treatment. The landlord referred to a letter submitted in evidence from her son's doctor which lists the benefits of her son living in the rental unit, such as being a stable environment. The landlord maintained that there is no ill intent in issuing the Two Month Notice and that it was done in good faith with the only reason being to have her son live in the rental unit.

The tenant testified that her tenancy agreement includes utilities for electricity and heat. The tenant stated that, when she refused to change the terms of the agreement with the landlord on October 16, 2017, to put these utilities in her own name, she received the Two Month Notice on October 17, 2017. The tenant questioned the good faith of the landlord in issuing the Two Month Notice after the tenant's refusal to change the terms of their tenancy agreement.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit.

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on October 31, 2017, and since I have found that the Two Month Notice was served to the tenant on October 17, 2017, I find the tenant has applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

I have reviewed all documentary evidence and the testimony of both parties. Based on the above and a balance of probabilities, I find that the landlord has proven that they intend to use the rental unit in a manner allowed by section 49 of the *Act*. I further find that the landlord issued the Two Month Notice to the tenant in good faith.

I find that the landlord has provided evidence to support her son's current condition. I further find that the letter from the doctor supports the landlord's stated purpose of the Two Month Notice and clearly communicates that the landlord's son moving into the rental unit would be beneficial to their treatment and recovery. I accept the landlord's testimony that she only considered issuing the Two Month Notice upon discussing her options with the RTB due to financial hardship and that there is no ill intent behind the Two Month Notice, only her stated purpose to have her son move into the rental unit. For the above reasons, the tenant's application to set aside the Two Month Notice is dismissed. As the tenant has not been successful in this application, I dismiss their request to recover the filing fee from the landlord.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed and the notice complies with section 52 of the *Act*, the Arbitrator must grant the landlord an order of possession. I find that Two Month Notice complies with section 52 of the *Act*.

The landlord testified that the tenant has paid the monthly rent for January 2018.

For the above reasons, I grant an Order of Possession to the landlord effective on February 09, 2018, the day before the next monthly rent payment is due.

Conclusion

I dismiss the tenant's application to cancel the landlord's Two Month Notice, without leave to reapply.

I grant an Order of Possession to the landlord **to take effect by 1:00 p.m. on February 09, 2018, after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 22, 2018

Residential Tenancy Branch