



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0752401 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 29, 2017 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the owner of the landlord company named in this application and that he had authority to speak on its behalf as an agent at this hearing. This hearing lasted approximately 55 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application. The landlord initially stated that he did not receive the tenant's entire written evidence package but after I confirmed the specific documents with him, he was in possession of all the documents. He confirmed that he may not have received some text messages, but then confirmed that he did have the relevant messages that the tenant referenced during the hearing. Accordingly, I find that the landlord was duly served with the tenant's relevant written evidence package.

The landlord confirmed that he did not provide any written evidence for this hearing.

The tenant confirmed receipt of the landlord's 2 Month Notice on September 29, 2017, which the landlord confirmed was posted to the tenant's rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on September 29, 2017.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 24, 2013 for a fixed term ending on June 30, 2014 after which the tenant was required to vacate the rental unit. This tenancy became a month-to-month tenancy after the tenant did not vacate the rental unit as required. Monthly rent in the amount of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant to the former landlord. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by the tenant and the former landlord and a copy was provided for this hearing. The landlord at this hearing purchased the rental building in 2014 and assumed this tenancy from the former landlord, including the security deposit.

The tenant seeks to cancel the landlord's 2 Month Notice and to recover the \$100.00 filing fee paid for her application.

The tenant provided a copy of the landlord's 2 Month Notice, which states an effective move-out date of November 29, 2017, indicating the following reason for seeking an end to this tenancy:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The landlord said that he needs the rental unit for use by a caretaker who already lives in the same building. He said that this caretaker has cleaning, repair and yard duties at the rental building, and also acts as a "watchman" at night. The landlord stated that since the year 2015, the caretaker lived in a two-bedroom apartment in the same building at a monthly rental rate of \$1,150.00 because she was babysitting her grandkids and earning money to pay the rent. He maintained that when she stopped babysitting, she wanted to move to a bachelor apartment in order to have a smaller space and pay less rent. He claimed that because the tenant is occupying the bachelor apartment that the caretaker requires, she had to move to a one-bedroom apartment and pay monthly rent of \$700.00 as of November 1, 2017, while waiting for the tenant to leave. He said that when the caretaker moves into the tenant's rental unit, she will only be paying \$300.00 monthly rent because she will get a \$350.00 discount from the current monthly rent of \$650.00 for that unit.

The landlord stated that the caretaker cannot stay in her current one-bedroom apartment because it is "economically not feasible" and he cannot lower the rent for that unit for the caretaker. He said that he can lower the rent for the bachelor apartment because it is a smaller unit. He claimed that there is only one other bachelor unit in the apartment building and that it is being occupied by one of his work clients who is in the second year of a five-year fixed term lease and paying \$450.00 per month for rent, so he cannot end her tenancy.

The tenant disputes the landlord's 2 Month Notice, stating that he did not issue it in good faith. The tenant claims that the landlord is attempting to raise her rent and because she did not agree to a previous rent increase of \$100.00 in April 2017, which is a 15.4% increase, he has been trying to evict her since then. She provided copies of text messages between herself and the landlord regarding the proposed rent increase. The landlord claimed that he had verbal conversations with the tenant that this increase was for covered parking, not rent as stated in the text messages. The tenant said that the caretaker was forced out of her two-bedroom into a one-bedroom apartment because she could not afford the monthly rent and the landlord's attempts at increasing it. She provided copies of text messages between herself and the caretaker regarding the above. The landlord said that the tenant is inferring that the caretaker moved because of rental prices, but that was not stated in the text messages. When the landlord claimed that the tenant could move into a one-bedroom apartment at the same building for \$1,150.00 per month plus utilities, the tenant claimed that if the landlord was willing to take more rent from her, he was just looking for more money, not a true place for the caretaker.

The tenant claimed that she had a previous Residential Tenancy Branch (“RTB”) hearing in June 2017, to dispute a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), after which a decision was made by a different Arbitrator. The file number for that hearing appears on the front page of this decision. The tenant provided a copy of that previous decision. The tenant stated that she was successful, the notice was cancelled, and orders were made against the landlord. The landlord said that this was a misunderstanding, the tenant’s tenancy ended by way of the previous fixed term tenancy agreement, but the Arbitrator found it to be a month-to-month tenancy and continued the tenancy.

The tenant confirmed that she filed an application to dispute a previous 2 Month Notice and both parties attended a hearing at the RTB in September 2017, after which a decision was made by a different Arbitrator. The file number for that hearing appears on the front page of this decision. The tenant provided a copy of that previous decision. The tenant stated that she was successful, the notice was cancelled, and the tenancy continued. The tenant claimed that the landlord reviewed the September 2017 decision and was unsuccessful by way of a review consideration decision issued by a different Arbitrator. The landlord said that the tenant was only successful because neither party provided a copy of the 2 Month Notice for the original hearing, he did not think that he had to supply a copy, and when he provided it at the review stage, it was found to be too late.

Analysis

Subsection 49(6)(e) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord intends, in good faith, to convert the rental unit for use by a caretaker/manager of the residential property.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. The tenant received the 2 Month Notice on September 29, 2017, and filed her application to dispute it on October 13, 2017. The tenant’s application is within the 15 day time limit under the *Act*. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

A claim of good faith requires honesty of intention with no ulterior motive...

...

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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

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

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith.

First, the landlord issued another 2 Month Notice to the tenant and a hearing was held regarding it in September 2017. The tenant said that she did not receive a 2 Month Notice, only a mutual agreement to end tenancy which she did not sign. The landlord said that he issued a 2 Month Notice but the tenant did not supply it for that hearing. The Arbitrator found that because neither party provided a copy of the 2 Month Notice and she could not examine it, the landlord was not entitled to an order of possession. The landlord applied for a review of the decision and supplied a copy of the 2 Month notice but his review was denied on the basis that he could have submitted the notice earlier, prior to the original hearing.

Second, a previous hearing was held in June 2017, where the landlord's 1 Month Notice was cancelled because the Arbitrator found that the landlord issued it for an invalid reason and the tenancy would continue on a month-to-month basis. The landlord claimed that it was a misunderstanding regarding a fixed term tenancy. There were other orders made against the landlord in that decision, including complying with section 29 of the *Act* before entering the tenant's rental unit illegally and references were provided to the landlord for contacting information officers at the RTB so that the landlord knew its responsibilities.

Third, the landlord attempted to increase the tenant's rent to be effective on June 1, 2017. This was a \$100.00 monthly rent increase, as confirmed by the text messages supplied by the tenant where the increase is referred to by both parties as "rent," not

parking, as claimed by the landlord. Furthermore, parking is already included in this tenancy, as per the tenant's original tenancy agreement. The landlord confirmed that he had not increased the tenant's rent during this tenancy, but that he would be agreeable if the tenant rented a one-bedroom unit after moving from the bachelor apartment, for a higher price of \$1,150.00 plus utilities (which the caretaker currently pays \$700.00 for because of her caretaker duties). Following the \$100.00 rent increase dispute between the parties in April 2017, the parties attended two RTB hearings regarding different notices to end tenancy in June and September 2017, after which the tenant was successful even after the landlord reviewed the September 2017, and the landlord continued to pursue an eviction against the tenant including issuing this current 2 Month Notice.

Fourth, there is another unit in the rental building that is a bachelor apartment that the landlord can use for the caretaker, where he is earning less monthly rent of \$450.00 compared to the tenant's unit of \$650.00. There is also the one-bedroom apartment where the caretaker is currently residing and where she can continue to reside. The landlord stated that it was more economical for the caretaker to live in the bachelor apartment where the tenant currently resides, rather than a one-bedroom apartment where he can earn more money. Yet, he is allowing a longer fixed term tenancy for a bachelor unit for \$450.00, despite the fact that he is earning \$650.00 from the tenant.

Fifth, the landlord did not provide any written evidence for this hearing in order to support his position. He also did not provide any witness testimony or documentary evidence from the caretaker who intends to move into the rental unit. The tenant, however, produced text messages between her and the caretaker from June 2017, where the caretaker indicates that she is moving out at the end of June and her rent had increased except she did not know the amount. She then indicated she was moving to "smaller headquarters."

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that he intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The 2 Month Notice, dated September 29, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated September 29, 2017, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession for landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award issued against the landlord for the filing fee.

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 04, 2018

Residential Tenancy Branch