



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to a review consideration decision rendered, pursuant to section 79 of the *Residential Tenancy Act* (the “Act”), on January 03, 2018, to reconsider a decision setting a notice to end tenancy aside following a hearing on December 21, 2017.

In the original decision of December 21, 2017, the Arbitrator cancelled a Two Month Notice to End Tenancy for Landlord’s Use of Property (the Two Month Notice) dated September 30, 2017. The landlord was granted a review hearing as it was determined in the review decision of January 03, 2018 that;

“...given the Landlord’s evidence of the hearing document and incorrect call in number I find that the Landlord has substantiated that he was unable to attend the hearing due to circumstances beyond his control.”

The landlord, the landlord’s assistant and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant T.C. (the tenant) stated that she would be the primary speaker on behalf of the tenants.

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

The landlord testified that the Notice of a Review Hearing was served to each tenant by way of registered mail on January 09, 2018. The tenant confirmed receipt of the Notice. In accordance with section 89 of the *Act*, I find the tenants were duly served with the Notice of a Review Hearing.

The landlord and the tenant each acknowledged receipt of each other's evidence and that they have had an opportunity to review it. In accordance with section 88 of the *Act*, I find the landlord and tenants duly served with each other's evidence.

Issue(s) to be Decided

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

Background and Evidence

The landlord and the tenant agreed that this tenancy commenced on May 01, 2014, with a current monthly rent of \$1,203.00, due on the first day of each month. The landlord and tenant agreed that the landlord currently retains a security and pet deposit in the amount of \$1,100.00.

A copy of the landlord's signed September 30, 2017, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenants to end this tenancy by November 30, 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 also entered into written evidence:

- a copy of a 'For Sale by Owner' sign showing a "Sold" sticker on it;
- A copy of a letter dated September 29, 2017, from the landlord to the tenants informing them that the landlord is giving them a Two Month Notice, due to the landlord selling their principal residence, and that the landlord will be occupying the tenants' rental unit;
- a copy of a document from a notary public dated September 29, 2017, showing the sale of the landlord's principal residence as being completed;
- copies of documents and pictures which establish the landlord's business; and
- a copy of an interim driver's license showing the landlord's new address as the rental unit in dispute.

The tenant entered into written evidence:

- a copy of a notice from Canada Post dated November 04, 2016, indicating that they were not able to deliver a piece of mail due to an unsafe walkway and a broken stairway;
- a copy of a letter dated November 21, 2016, detailing repairs and verbal requests for repairs from April 2016 to November 2016 and requesting the landlord to make numerous repairs to the rental unit which the landlord signed to acknowledge receipt of;
- a copy of a letter dated March 14, 2017, detailing repairs and verbal requests for repairs from November 2016 to March 2017 and requesting the landlord to make numerous repairs to the rental unit which the landlord signed to acknowledge receipt of;
- copies of two letters dated March 15, 2017, each describing an altercation that occurred on March 14, 2017, between the landlord and Tenant T.C. and requesting the landlord to only deal with Tenant D.R. for any future tenancy matters;
- a copy of a letter from the landlord to Tenant D.R. regarding the altercation on March 14, 2017; and
- a timeline of interactions with the landlord as well as verbal requests for repairs from March 2017 to September 2017. The letter states that the tenant called the landlord to inquire about a fence that was removed between the rental unit and another property of the landlord's. The tenant, in this letter, submits that the tenant left a message for the landlord on September 30, 2017, and that the landlord came to the rental unit later that same day to collect rent and to issue the Two Month Notice.

The landlord testified that he has sold his principal residence and moved into another house. The landlord submitted that he does not have enough room for storage at his new residence and requires the rental unit for storage. The landlord testified that the tenants have not paid the monthly rent since the Two Month Notice has been issued.

The tenant testified that there are numerous repairs required for the rental unit including a leaking roof, broken fence and broken eaves troughs. The tenant submitted that she has given the landlord multiple requests in writing for repairs to be completed and that there was a verbal altercation with the landlord after she tried to discuss required repairs with him on March 14, 2017, when he was attending to repairs on the roof at the rental unit. The tenant maintains that the roof continues to have leaks despite the landlord's efforts. The tenant stated that she feels the landlord is trying to evict them so

that he does not have to address the repairs in the rental unit. The tenant testified that she has tried to pay the rent but the landlord has been avoiding her.

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 Notices were 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 13, 2017, and since I have found that the Two Month Notice was served to the tenants on September 30, 2017, I find the tenants have 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 find the landlord has provided evidence and testimony that they have sold another property and intend to use the rental unit in a manner allowed by section 49 of the *Act*. I further find that, based on a balance of probabilities, the landlord has issued the Two Month Notice to the tenants in good faith.

Although the tenants have provided evidence that they have been requesting repairs to be completed at the rental unit, verbally and in writing, and there is written evidence of

an altercation of some type between Tenant T.C. and the landlord regarding required repairs in March 2017, I find that six months have passed since that altercation and the last written request to the landlord for repairs to be made. I find there is no evidence that the landlord has made any other attempts to end the tenancy since the altercation in March 2017 which would put the good faith of the Two Month Notice issued on September 30, 2017, into question.

I find that the landlord has provided a document from their Notary Public to confirm the sale of their principal residence, dated September 29, 2017, the same date that the landlord wrote their letter to the tenant advising them of the landlord's intent to issue the Two Month Notice. I find that the landlord's letter to the tenants being the same date as the document from the Notary Public supports the landlord's claim of good faith in that the sale of the landlord's principal residence was the primary reason for the landlord to issue the Two Month Notice. Based on the above, I find that the landlord had already made the determination to issue the Two Month Notice before receiving a call from the tenant on September 30, 2017, inquiring about the broken fence.

For these reasons I dismiss the tenants' Application to cancel the Two Month Notice, without leave to reapply.

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(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 Two Month Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' Application and as the tenants have not paid the monthly rent since the Two Month Notice was issued on September 30, 2017, I find the landlord is entitled to a two day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenants. 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.

The previous RTB decision dated December 21, 2017, is set aside and of no force or effect.

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: February 06, 2018

Residential Tenancy Branch