



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL

Introduction

The tenant submitted an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated November 27, 2017 (“2 Month Notice”).

The tenant and landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. Also attending the hearing were the co-landlord J.E. (“co-landlord”), the building manager/witness for the landlord C.M., and two witnesses for the tenant, J.D. and F.D. None of the witnesses were called to testify during the hearing.

The tenant confirmed receiving the evidence from the landlord and that he had the opportunity to review that evidence prior to the hearing. The tenant confirmed that he did not serve any documentary evidence on the landlord. I find the tenant was served in accordance with the *Act*.

Preliminary and Procedural Matters

The landlord provided his email address at the outset of the hearing which was confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to the landlord and that the tenant would be sent the decision by regular mail and that any applicable orders would be sent to the appropriate party.

During the hearing the parties confirmed that the tenant has paid for use and occupancy of the rental unit for the month of February 2018. As a result, I will consider this fact if the landlord is entitled to an order of possession.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

Background and Evidence

The parties agreed that a fixed-term tenancy began on August 1, 2015 and after one year reverted to a month to month tenancy. The parties agreed that a written tenancy agreement exists; however, a copy was not submitted in evidence. The parties agreed that monthly rent is currently \$852.00 per month and is due on the first day of each month. The parties also agreed that the tenant paid a security deposit of \$399.50 at the start of the tenancy.

The tenant confirmed that he was served on November 27, 2017 with the 2 Month Notice which was dated November 27, 2017. The effective vacancy date on the 2 Month Notice is listed as January 31, 2018. The tenant disputed the 2 Month Notice on December 4, 2017 which was within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason as:

“The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”

[Reproduced as written]

The tenant indicated that he was disputing the 2 Month Notice because he has had a stroke and has difficulty finding a place to live and that a relative is working on renovating a rental unit for him to live it but that it won't be ready until April 2018.

The landlord submitted in evidence the electrical permits that indicate that significant electric work is required throughout the six-plex apartment building and that the building must be vacant for the work to be performed. The landlord testified that all six tenants have been given 2 Month Notices and that three have already vacated and that the electrical work alone is expected to take 5 to 6 weeks and then another 3 to 4 months to repairs the significant damages to walls etc. that will remain after the electrical work is done including changing to a 400 amp services and replacing wiring that is 63 years old and is a safety issue according to the landlord who claims he also has an engineering degree.

The landlord also presented the electrical work invoice which is approximately \$40,000.00 and stated that the amount does not include all of the repairs to the building and upgrades that the landlord intends to do once the electrical work is complete and safe as the landlords stated that the current electrical wiring they landlords could not guarantee as safe at this time as the building was built in 1954.

The landlord also stated that once the work is completed, each tenant will be able to control their own heat and that central air conditioning is being discontinued as people that smoke in the building contrary to the rules end up passing that smoke smell throughout every unit which is not fair to other tenants who do not smoke and comply with the non-smoking rules.

As the tenant confirmed that his witnesses would not be providing testimony related to the 2 Month Notice, the tenant was advised that I did not need to hear from his witnesses. The tenant did not dispute the validity of the electrical permits submitted in evidence, and stated that he could not afford movers to assist with his move. The tenant was reminded that he is entitled to one month's compensation as part of being served with a 2 Month Notice under the *Act* which the landlord confirmed he understood.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice – The tenant disputed the 2 Month Notice within the 15 day timeline provided for under section 49 of the *Act*. The reason indicated on the 2 Month Notice is “The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.” Once the tenant has disputed the 2 Month Notice, the onus of proof reverts to the landlord to provide sufficient evidence to support that the 2 Month Notice is valid.

I have carefully reviewed the electrical permits and supporting testimony from the landlord and find that the landlord has provided sufficient evidence to support that the 2 Month Notice is valid. I also find that the 2 Month Notice complies with section 52 of the *Act*. In addition, I note that the *Act* does not provide for a hardship clause for those that have problems moving from a rental unit and as such I afford no weight to the fact that the tenant may have difficulties with moving. The parties are reminded that the tenant is entitled to compensation when served with a 2 Month Notice and that the compensation is the equivalent of one month's rent.

Based on the above, **I dismiss** the tenant's application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice issued by the landlord. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (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.**

[My emphasis added]

As the parties agreed that the tenant has paid for use and occupancy of the rental unit for the month of February 2018, **I grant** the landlord an order of possession effective **February 28, 2018 at 1:00 p.m.** I find the tenancy ended on January 31, 2018 which is the effective date of the 2 Month Notice.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed. The 2 Month Notice issued by the landlord is upheld.

I find the tenancy ended on January 31, 2018, which was the effective date listed on the 2 Month Notice.

The landlord has been granted an order of possession effective February 28, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2018

Residential Tenancy Branch