



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution ("ADR") with Notice of Hearing and the tenant's evidence for this hearing. The landlord confirmed he was able to hear the digital recording included in the tenant's ADR package.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy for Landlord's Use be cancelled or is the landlord entitled to an Order of Possession for the rental unit?

Is the tenant entitled to recover the \$100.00 filing fee for this application from the landlord?

Background and Evidence

This tenancy began August 1, 2016 as a month to month tenancy. A copy of the residential tenancy agreement with an addendum to the agreement was submitted for evidence at this hearing. The rental amount of \$750.00 is due on the 1st of each month. The landlord confirmed that he continues to hold a \$375.00 security deposit paid by the tenant prior to the outset of the tenancy (July 20, 2016).

On November 18, 2017, the landlord personally served the tenant with a 2 Month Notice to End Tenancy. A copy of that 2 Month Notice was submitted as evidence for this hearing. The notice identified the following reason for seeking an end to this tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...

The landlord testified that his 2 oldest sons are moving into the rental unit and will pay rent to assist with the landlord's mortgage by paying \$700.00 each month. He testified his son (age 25) has recently finished studies and has acquired a job.

The tenant applied on December 4, 2017 to cancel the landlord's 2 Month Notice. The tenant testified that both of the landlord's sons already live with the landlord. The tenant testified that, prior to issuing the 2 Month Notice to End Tenancy, the landlord attempted to increase his rent. The tenant testified that the landlord also told him, on a prior occasion that he may have to move out as the landlord's cousin might move in with him and use the rental unit.

The tenant provided a recording of a telephone conversation between himself and the landlord. The video recording was, at times, difficult to hear because the parties were speaking over each other. The tenant telephoned the landlord and asked if he was being evicted because he had not agreed to a rent increase. The landlord stated, on the telephone call that the "rent increase" referred to by the tenant was in response to the tenant's request to use laundry facilities. The landlord stated, on the call that he had told the tenant he would provide laundry facilities if the tenant agreed to a \$50.00 monthly rent increase. The tenant asked other questions to the landlord. The landlord's answers were the same as the answers he provided at this hearing: he told the tenant that he will no longer rent the unit –his eldest son will reside in the unit and assist with the mortgage when he is able.

The tenant submitted that the landlord is acting in bad faith in issuing the notice to end tenancy. He submitted that this is simply another attempt by the landlord to evict him so that he can charge more rent. The tenant testified that there are no circumstances under which he would agree to move out of the rental unit.

The landlord testified, as he stated on the telephone recording in evidence that the end of this tenancy is for the purpose of helping his sons while maintaining some rental income. He testified that it is not about getting more money for the rental unit.

Analysis

When a tenant applies to cancel a Notice to End Tenancy, the burden of proof shifts to the landlord to prove that the Notice issued to the tenant was valid and that the reason for issuing the notice was justified. In this case, the landlord has relied on the tenant's evidence to support his position. He submitted that the reasons he gave to end the tenancy on the tenant's recording of their phone call were the same reasons he gave in his notice to end tenancy and in his testimony at this hearing.

I accept the consistent testimony of the landlord that his son will move into the rental unit and that his reasons for allowing his son to reside in the unit are simple: to assist him in beginning to live independently after completing his school, having his son close to the rest of his family and creating responsibility for payment of expenses to the son. I find that the landlord gave his testimony in a calm and reasoned manner. I find that the landlord's testimony was consistent with the evidence presented for the end of the tenancy. I find that the tenant has not provided sufficient evidence to prove that the landlord is acting in bad faith in ending this tenancy for landlord's use. I find that the audio recording submitted by the tenant does not provide any evidence of an ulterior motive to end the tenancy.

I dismiss the tenant's application pursuant to section 49 of the *Act* to cancel the landlord's 2 Month Notice. The 2 Month Notice required the tenant to vacate the rental premises by January 31, 2018. Pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to a 2 day Order of Possession.

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.

[emphasis added]

Conclusion

I dismiss the tenant's application to cancel the notice to end tenancy as well as the application to recover the filing fee.

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in 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: February 26, 2018

Residential Tenancy Branch