



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, CNL, ERP, FFT, LAT, LRE, MNDCT, MNRT, OLC, OPT, PSF, RP, RR
Landlords: MNRL, OPL, OPU

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- Cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”);
- An order for the Landlord to complete emergency repairs for health or safety reasons;
- Authorization to change the locks of the rental unit;
- An order suspending or setting conditions on the Landlord’s right to enter the rental unit;
- A Monetary Order for money owed or compensation for damage or loss under the Act, the regulation, or the tenancy agreement;
- Compensation for emergency repairs completed and paid for by the Tenant;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- An Order of Possession for the rental unit;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order for the Landlord to complete repairs already requested in writing;
- A rent reduction for repairs, services, or facilities, agreed upon but not provided; and
- Recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession based on the 10 Day Notice; and
- A Monetary Order for unpaid rent.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlords and the Tenant, all of whom provided affirmed testimony. The hearing was also attended by legal counsel for the Landlords who did not provide testimony or evidence. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in her favor will be mailed to her at the dispute address and e-mailed to her at the e-mail address provided by her in the online dispute resolution system. At the request of the Landlords, copies of the decision and any order issued in their favor will be e-mailed to them at the e-mail address provided by them in the online dispute resolution system.

Preliminary Matters

Preliminary Matter #1

In her Application the Applicant sought multiple remedies under multiple sections of the *Act*, many of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel several Notices to End Tenancy, and the Landlord applied for an Order of Possession and a Monetary Order in relation to these Notices to End Tenancy, I find that the priority claims relate to whether the tenancy will continue and the payment of rent. I find that the other claims made by the Tenant are not sufficiently related to rent or the continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to re-apply:

- An order for the Landlord to complete emergency repairs for health or safety reasons;
- Authorization to change the locks of the rental unit;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- A Monetary Order for money owed or compensation for damage or loss under the *Act*, the regulation, or the tenancy agreement;
- Compensation for emergency repairs completed and paid for by the Tenant;
- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement;
- An Order of Possession for the rental unit;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order for the Landlord to complete repairs already requested in writing; and
- A rent reduction for repairs, services, or facilities, agreed upon but not provided;

Based on the above, the hearing proceeded based only on the Tenants Application seeking cancellation of the Notices to End Tenancy and recovery of the filing fee, and the Landlords' Application seeking an Order of Possession and a Monetary Order based on the Notices to End Tenancy.

Preliminary Matter #2

On January 19, 2018, the Landlord filed an Amendment to an Application for Dispute Resolution (the "Amendment") stating that they served a new Two Month Notice because the Landlords or their close family members intend in good faith to occupy the rental unit. On February 19, 2018, the Landlords filed a second Amendment stating that they served another Two Month Notice because they have all the necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Although the Tenant raised concerns about the service dates noted in the Amendments, no concerns were raised about the service of the Amendments on her. As a result, I amended the Landlords' Application to include requests for an Order of Possession based on both of the Two Month Notice's.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the 10 Day notice, or either of the Two Month Notice's?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

If the Tenant is unsuccessful in cancelling any of the above Notices to End Tenancy, are the Landlord's entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month-to-month tenancy began on March 1, 2017, and that rent in the amount of \$850.00 is due on the first day of each month. The tenancy agreement states that rent includes water, sewer, electricity, a stove and oven, a refrigerator, window coverings and parking for one vehicle. A hand written notation also states that heat is not included and the Landlords testified that there is a gas fireplace for heating the unit which the Tenant is responsible to pay for. Both parties agreed that a security deposit in the amount of \$425.00 was also paid, which the Landlords still hold.

The Landlords testified that the electricity bill for the Tenant's rental unit has significantly increased as the Tenant is using an electric heater to heat the rental unit instead of the gas fireplace. As a result, the Landlords testified that they sent the Tenant copies of the electricity bill and demand letters requesting that the Tenant pay \$500.00 in electricity charges. The Landlords stated when the Tenant failed to pay for the above noted electricity charges and was short \$150.00 in rent for January 2018, a 10 Day Notice was posted to the door of her rental unit on January 2, 2018. In support of their testimony the Landlords provided a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") indicating that the 10 Day Notice was served in the manner described above.

The 10 Day notice in the documentary evidence before me, dated January 2, 2018, has an effective vacancy date of January 11, 2018, states that as of January 1, 2018, the Tenant owed \$150.00 in rent, and that the Tenant has failed to pay \$500.00 in outstanding utilities following demand letters served on her on November 26, 2017, December 2, 2017, and December 31, 2017.

The Tenant acknowledged receipt of the 10 Day Notice and both parties agreed that the \$150.00 in outstanding rent was paid by the Tenant in accordance with section 46(4)(a) of the *Act*. However, the Tenant stated that no money is owed for electricity as her

tenancy agreement states that electricity is included. The Landlords argued that the Tenant is not supposed to use electricity to heat the unit as there is a gas fireplace; however, the Tenant disputed being told this information and reiterated that electricity is included in the cost of her rent according to the tenancy agreement.

The Landlords stated that the Tenant's rental unit is located above a barn on their horse farm. The Landlords stated that the unit was previously used for hay storage but was converted to a rental unit some years ago. The Landlords testified that they have taken on a new self-boarder with a number of horses and they now require the space for hay storage. In support of this testimony the Landlords provided an e-mail from a client stating that they have been assured that they will be provided with adequate hay storage. As a result, the Landlords stated that they require the rental unit for their own purposes and therefore posted a Two Month Notice to the door of the Tenant's rental unit on December 31, 2017. In the hearing the Tenant acknowledged receiving the Two Month Notice on December 31, 2017.

The Two Month Notice in the documentary evidence before me, dated December 31, 2017, has an effective vacancy date of March 1, 2018, and states the reason for ending the tenancy is because the rental unit will be occupied by the landlord or the landlord's close family member.

The Landlords stated that they were worried they had checked off the wrong ground on the Two Month Notice and as a result, they amended the original Two Month Notice by checking of the box indicating that the landlord has all the necessary permits and approvals required by law to convert the rental unit to non-residential use. The Landlords stated that they personally served the amended Two Month Notice on the Tenant on February 20, 2018, and submitted a witness Proof of Service in support of this Testimony.

The Tenant stated that according to their own testimony, neither the Landlords nor their close family members will be moving into the rental unit and that in any event, the Landlords do not have any close family members to move in. The Tenant stated that the Landlords have had 25 horses on the property during her entire tenancy and have never needed additional hay storage. As a result, she believes that this is not the real reason for seeking to end her tenancy. She testified that she believes the Landlords are seeking to end her tenancy because she will not pay the additional utilities and that they intend to re-rent the unit at a higher rate after she vacates. She stated that her neighbour, who also lives above the barn, has not been served with a Two Month Notice and alleged that the Landlords credibility is lacking as they served her with a Two

Month Notice stating that they have all the permits and approvals required to convert the rental unit, but they do not.

The Landlords reiterated that they intend to use the rental unit for their own purposes and not for rental. Specifically the Landlords stated that they intend to convert the unit to non-residential use by removing all fixtures necessary to make the unit suitable for living so that it may be used for hay storage. The Landlords testified that they do not require any permits to convert their own unit into storage and submitted a letter from a previous city council member stating that no permits are required. The Landlords acknowledged that they served two Notices to End Tenancy listing different grounds for ending the tenancy but argued that they did this out of an abundance of caution. Further to this, the Landlords testified that the purpose for ending the tenancy has not changed and that both grounds listed are consistent with their stated purpose for ending the tenancy.

Analysis

Based on the documentary evidence and testimony before me, I am satisfied that the tenant was served with the original Two Month Notice on December 31, 2017, the date she acknowledged receiving it in the hearing.

Section 49(3) of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or their close family member intends in good faith to occupy the rental unit.

Although the Tenant argued that neither the Landlords nor their close family members will occupy the unit, Black's Law Dictionary includes the following in the definition of "occupy"; to tenant, to take or hold in possession of, to hold or keep for use, and to possess. As a result, I find that the Landlords or their close family members are not required to move into or tenant the rental unit in order to occupy it. Instead, I find that the term "occupy" refers more generally to the holding of possession.

The Tenant also argued that the Landlords have an ulterior motivation for ending her tenancy as they intend to re-rent the unit at a higher rental rate once she has vacated. The Landlords denied this allegation and as the Tenant did not submit any documentary evidence to corroborate this assertion, I find it speculative in nature.

Based on the above I find that the Landlords have satisfied me on a balance of probabilities that they intend in good faith to occupy the rental unit and that they do not have an ulterior motive that negates this honesty of intention. As a result, I dismiss the

Tenant's Application seeking to cancel the original Two Month Notice served because the Landlords or their close family members intend to occupy the rental unit. This Application is dismissed without leave to reapply. As a result, I decline to grant the Tenant recovery of the filing fee.

As the Tenant's Application was dismissed, section 55 of the *Act* requires that I give the Landlords an Order of Possession if the Notice to End Tenancy is compliant with section 52 of the *Act*. As the above noted Two Month Notice is signed and dated by the Landlord, gives the address for the rental unit, states the effective date of the notice and the reason for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, the Landlords are therefore entitled to an Order of Possession. As the effective date of the Two Month Notice has passed, the Order of Possession will be effective March 31, 2018.

As I have already found above that the tenancy is ended as a result of the original Two Month Notice, I do not find it necessary to make any findings of fact or law in relation to the amended Two Month Notice seeking to end the tenancy because the landlord has all necessary permits required by law to convert the rental unit to a non-residential use.

In an effort to provide clarity for the parties and to prevent future disputes, the parties should be aware that pursuant to section 51(1) of the *Act*, the Tenant is entitled to receive either a free month of rent or an amount that is equivalent to one month's rent payable under the tenancy agreement. If the Tenant has not already been provided with one month of free rent, then the Tenant is entitled to receive an amount that is equivalent to one month's rent payable under the tenancy agreement. The Parties should also be aware that pursuant to section 51(2) of the *Act*, in addition to the compensation noted above, if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period or the rental unit is not used for that purpose for at least six months, the Landlords must pay the Tenant an amount that is equivalent to double the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant's Application seeking to cancel the original Two Month Notice served because the Landlords or their close family members intend to occupy the rental unit is dismissed without leave to reapply. The Landlord's monetary claim for utilities is also dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **1:00 P.M. on March 31, 2018**. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 23, 2018

Residential Tenancy Branch