



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, OLC

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 Landlords' Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to have the landlord comply with the Act, regulation or tenancy agreement. pursuant to section 62; and
- authorization to recover his 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, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by his son. The landlord's agent acknowledged receipt of the tenants' evidence. The landlord did not submit any documentary evidence for this hearing.

Issues to be Decided

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

Is the tenant entitled to an order compelling the landlord to act in accordance with the Act, regulation or tenancy agreement?

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

Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about February 2015. Rent in the amount of \$740.00 is payable in advance on the first day of each month, with

a security deposit of \$370.00. The landlord's brother who is his agent for this tenancy, issued a Two Month Notice to End Tenancy for Landlord's Use of Property on January 20, 2018 with an effective date of March 31, 2018. The agent's brother owns the home and wishes to move into this unit as he works in Langley and it would make logistical and financial sense. The agent's brother lives in Richmond at this time and wants to be closer to his work for the reasons noted above. The agent testified that he adamantly disputes that this notice was issued so that they could get a new tenant and get higher rent. The agent testified that they tried to work with the tenant and even offered to extend the tenancy for a couple of extra months to help with the transition and are still willing to do so.

The agent testified that if money was the issue they would have given a rent increase every year but have never given one to the tenant. The agent testified that they have in fact reduced the rent ten dollars a month during the tenancy. The agent testified that the tenant's claim that they had discussions about a ten percent rent increase are "false and a lie". The agent testified that no one other than his brother will be moving into the home. The agent testified that the tenant has made numerous allegations that are untrue. The agent testified that they seek an order of possession.

The tenant gave the following testimony; feels the notice is "unfair", feels discriminated against, and doesn't think the landlord is acting in good faith. The tenant testified that the landlord's brother told him that they want a ten percent rent increase or have someone else move in that will pay more rent. The tenant testified that the landlord was very clear in that the landlord acted in bad faith and that the notice should be cancelled and have the tenancy continue.

Analysis

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

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is 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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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 they do not have an ulterior motive for ending the tenancy.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I am mindful that the tenant is at risk of losing his housing and that it be natural for him to be more animated or upset.

However, considered in its totality I find the landlords agent to be a more credible witness than the tenant. The agent provided consistent, logical testimony which was supported with documentary evidence where available. The landlord admitted when he could not recall specific facts.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. When given the opportunity to cross-examine the landlords' agent, the tenant chose to ask irrelevant personal questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the landlord's agent testimony, shouting disagreement with his evidence and calling him a liar.

Based on the foregoing, where the evidence of the parties clashed I found that the landlord's version to be more credible and consistent with how a reasonable person would behave.

The landlords' agent gave clear concise and credible testimony. He provided details as to the logistical and financial benefits for his brother to move closer to his employment. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. The Two Month Notice dated January 20, 2018 with an effective date of March 31, 2018 is confirmed. The Notice remains in full effect and force. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

Based on the information provided I am satisfied that under these circumstances, the tenants tenure and the willingness of the landlord to extend a month to assist the tenant, that the order of possession take effect at 1:00 p.m. on April 30, 2018.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenant's application is dismissed in its entirety without leave to reapply.

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 22, 2018

Residential Tenancy Branch