



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with the tenants' 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 of Property (the 2 Month Notice) pursuant to section 49; and
- recovery of the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution dated January 27, 2018 and evidence. I find that the tenant's materials were served on the landlord in accordance with sections 88 and 89 of the *Act*.

The tenant testified that she was served with the landlord's 2 Month Notice and evidence. I find that the 2 Month Notice was served in accordance with section 88 of the *Act*.

While the tenant said that the landlord's evidence was not served within the required timelines, she said that she had received the landlord's materials approximately 6 days prior to the hearing. The tenant testified that she did not review the landlord's evidence as she found his written submissions to be emotionally hurtful and could not read on. Based on the undisputed evidence I find that the tenant was served with the landlord's evidence and had sufficient opportunity to review them prior to the hearing. The tenant's failure to review the landlord's evidence in its entirety arises, not from the timeframe of service, but due to the tenant's objection to their content. Under the

circumstances, pursuant to Rule of Procedure 3.17 and section 71(c) of the *Act*, as I find that its inclusion does not unfairly prejudice the tenant, I find that the landlord's evidence was sufficiently served for the purposes of the *Act*.

Issue(s) 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 recover the filing fee for this application from the landlord?

Background and Evidence

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/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

This periodic tenancy began in November, 2016. The monthly rent is \$1,725.00 payable on the first of each month. The rental unit is in a townhome and connected to the landlord's residence.

There was a previous hearing under the file number on the first page of this decision dealing with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause issued on September 11, 2017 (the "1 Month Notice"). The tenant was successful in that application and the 1 Month Notice was cancelled and found to be of no further effect.

The landlord served a 2 Month Notice dated January 26, 2017 stating that the landlord or close family members intend to occupy the rental unit. The landlord explained that his adult children, their partners and friends intend to occupy the rental unit. The landlord submitted into written evidence letters from the adult children in support of his application. The written submissions explain the family's intentions, the expected schedule of usage, and the connection to the area. The landlord explained that his residence does not have sufficient rooms to allow everyone appropriate privacy and space. The landlord testified that he also has some medical conditions which increase his requirement for private space.

The landlord gave evidence that the previous 1 Month Notice was issued during a period when his medical condition was heightened. The landlord explained that the circumstances that led to his issuance of the 1 Month Notice seem to have been

resolved. The landlord said that the 2 Month Notice is unrelated to the earlier 1 Month Notice.

The tenant questions the landlord's intention. The tenant testified that she overheard the landlord speaking with someone on the phone about his intention to rent out the suite at a higher monthly rent. The tenant submits that she is unaware of the landlord's family members staying with the landlord previously. The tenant further testified that she has had conversations with the landlord's family where they stated they are happy with their present living arrangements with no intention of relocating.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, 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, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities that he intends for the rental unit to be occupied by himself or his close family member.

The tenant questions the intention of the landlord and raises a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that 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.

Policy Guideline 2 reads in part as follows:

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.

I find that there is sufficient evidence to find that the landlord intends in good faith for his children to occupy the rental unit. The landlord has provided cogent and consistent testimony as well as written statements from his children as to their intentions. I accept the landlord's submission that the rental unit will be occupied by his adult children and their respective partners and other friends throughout the year.

I do not find the tenant's submissions to be persuasive. The tenant testified that she overheard the landlord speaking with a party that "the suite is available March 31st for \$2,500 per month". I find that snippets of overheard conversation to be insufficient evidence that demonstrate an ulterior motive. I do not find the tenant's personal observation about the frequency of the landlord's family coming for prior visits to demonstrate dishonesty on the part of the landlord.

I find that the landlord has provided sufficient evidence to support their intended use of the property. I accept the landlord's evidence that the previous 1 Month Notice was issued under different circumstances. I find that the landlord, in his submissions have sufficiently addressed and dismissed the concerns that the present 2 Month Notice is related to the earlier 1 Month Notice. I accept the landlord's evidence that the personal and family circumstances that have given rise to the reason to issue the 2 Month Notice is wholly unrelated to the earlier 1 Month Notice.

Based on the foregoing I dismiss the tenant's application to cancel the 2 Month Notice.

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

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..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

I find that the copy of the 2 Month Notice submitted into evidence conforms with the form and content requirement of section 52 of the *Act* as it is signed and dated, provides the rental unit address and the reason for the Notice being issued.

As I have dismissed the tenant's application and am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. Based on the submission of the landlord at the hearing, I issue the Order of Possession with an effective date of May 1, 2018.

As I have dismissed the tenant's application the tenant is not entitled to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is dismissed without leave to reapply. The tenant's application to recover the filing fee is also dismissed.

I grant an Order of Possession to the landlord effective **May 1, 2018**. 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

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 28, 2018

Residential Tenancy Branch