



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL, OPR, MNR, FF, MT, CNL, ERP, LAT, LRE, OLC, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for landlord's use of property/ for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- 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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with his notice of hearing package in person on November 17, 2017. Both parties also confirmed that the tenant served the landlord with her notice of hearing package via Canada Post Registered Mail on November 12, 2017.

Extensive discussions took place with both parties in which, I made a finding that due to the landlord's inability to effectively communicate and present his application through his wife and with the assistance of a private mediator proved ineffective. After 30 minutes of these discussions, the landlord's application was dismissed with leave to reapply. The hearing proceeded on the tenant's application only.

Continued discussions with both parties regarding the tenant's application for dispute ended after an additional 30 minutes caused an adjournment due to a lack of time. Both parties provided both conflicting and contradictory testimony regarding the service of materials.

The tenant's amendment for more time (MT) to make an application for dispute resolution to dispute the notice to end tenancy was dismissed. The tenant provided affirmed testimony that the landlord was served with the notice of amendment in person on January 12, 2017, which the landlord disputed receiving. The tenant was unable to provide any supporting evidence of service.

The tenant's amendment for an increase in the monetary claim to \$7,726.58 was served to the landlord in person on January 9, 2017 by placing it in the landlord's mail box was confirmed by the landlord, J.T.X. after his wife, S.L. disputed receiving this package. The tenant referred to her documentary evidence exhibit "O-1", a signed acknowledgement by the landlord, J.T.X. confirming receipt. As such, I find that the landlord was properly served as per sections 88 and 89 of the Act.

The tenant's application was adjourned. Both parties were cautioned that no new evidence was to be submitted, nor would it be accepted. A copy notice of adjourned hearing is attached to this interim decision.

On April 11, 2018 the hearing was reconvened with both parties (the landlord was represented by counsel, K.M.) present.

I accept the evidence of both parties and find that each has been sufficiently served with the notice of hearing package as per section 90 of the Act to enable them to identify and respond to the issue(s).

The hearing proceeded on the tenant's application 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;

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Preliminary Issue(s)

During the hearing extensive discussions took place which resulted in the finding that the tenant's request(s) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act, for an order for the landlord to make repairs and an order for emergency repairs, an order to suspend or set conditions on the landlord's right to enter the rental premises and for an order for the landlord to provide services or facilities. As these sections of the tenant's application are unrelated to the main section

which is to cancel the notice to end tenancy issued for landlord's use of property, I dismiss these sections of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Although there was issue on whether a signed tenancy agreement was made, both parties agreed that this tenancy began on April 1, 2015 on a month-to-month basis. The monthly rent was \$1,000.00 and a \$500.00 security deposit was paid.

The tenant seeks an order cancelling the 2 Month Notice for Landlord's Use of Property (the 2 Month Notice) dated October 16, 2017 which was served on October 21, 2017 by Canada Post Registered Mail. The 2 Month Notice sets out an effective end of tenancy date of December 31, 2017 and provides for one reason selected as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant has argued that the landlord has not in good faith issued the 2 Month Notice by tampering with the submitted documentary evidence. The tenant claims that the landlord has tampered with documents. The tenant claims that the landlord originally tried to end the tenancy in June 2017 by "telling me that he needed the suite for the Grandmother. When I confronted him about that, citing his own words that she would not be coming from abroad, he just walked away. He gave me a 3 month notice with no compensation and no discussion, contrary to his promises."

The landlord disputes the tenant's claims stating that the landlord intends to have the space occupied by his growing extended family. The landlord clarified that the landlord's mother-in law would occupy the space to assist in caring for the landlord's two sons and that the space was needed. The landlord also argued that the original notice was in error and that subsequent to that a proper 2 Month Notice was issued.

The tenant states that the property has two rental suites which the landlord has recently rented one, of which was empty for the last two months and argues that if the landlord really did need

the additional space then why did they not keep the second rental space. The tenant argued that the landlord has actively sought a new tenant in the second rental space and as such the landlord's claim for needed space was not credible. The tenant also argues that the landlord had implied that rent was discounted and that a higher rent could be collected for another tenant.

The tenant also argued that the landlord had approached her in June 2017 that he needed the suite for the Grandmother and when confronted, "he just walked away". The landlord later changed his story by saying he needed the suite for his "growing family needs", but when questioned he said that "even if his wife needed it" he could take back the suite.

The landlord disputed all of the tenant's claims stating that no "bad faith" or "dishonesty" is being used to end the tenancy. The landlord states that they have a use for the rental unit for their growing family. The landlord also argued that it is not up to the tenant to determine which of the rental spaces are to be used by the landlord for their purposes. The landlord has deemed that this rental space is more appropriate for their use.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant argues that the landlord has not in good faith served the 2 Month Notice.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

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...

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.

I find in reviewing the evidence of both parties that I find the landlord to be without ulterior motive and credible. Although the tenant has strongly expressed that the landlord is in "bad

faith" issuing the 2 Month Notice, I find insufficient evidence of this. As such, the tenant's application to cancel the 2 Month Notice is dismissed. The 2 Month Notice dated October 21, 2017 is upheld. As the effective end of tenancy date has now passed, I grant the landlord an order of possession effective two days after service upon the tenant.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed.
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: April 30, 2018

Residential Tenancy Branch