



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenants have filed an application for dispute resolution (the “Application”) to cancel a Two-Month Notice to End Tenancy dated February 27, 2018, as well as the costs of their filing fee.

An evidence package was filed by the Landlord in response to the application and attempts were made to hand-deliver the package to the rental premises; in addition, the package was sent via registered mail and a tracking number from Canada Post was submitted into evidence. I am satisfied that proper service of all notices and evidence was effected as per the Rules of Procedure.

One of the Tenants, S.O., and the Landlord’s mother, J.R., attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, to call witnesses and to cross-examine one another. The Landlord’s mother, who is listed as co-owner of the rental premises but not named on the tenancy agreement, acted as the Landlord’s agent during this hearing as she testified that her son is struggling with a chronic illness and he required her to attend this hearing in his place; a letter confirming this appointment was submitted into evidence and I am satisfied that the Landlord gave his permission to allow his mother to act on his behalf, as his agent.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must also consider if the landlord is entitled to an order of possession if the Application is dismissed and whether the landlord has issued a notice to end tenancy that is compliant with the *Act*.

In rendering this decision, I considered all affirmed testimony and evidence submitted, however, only the relevant facts are discussed below.

Issue(s) to be Decided

Should the Two-Month Notice to End Tenancy for the Landlord's use of the property be canceled, pursuant to section 49 of the *Residential Tenancy Act* (the "Act")?

Should the Tenant be unsuccessful in seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, is the Landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The Tenant and Landlord entered into a month-to-month tenancy in September of 2015; a copy of the agreement was submitted into evidence. The Tenant agreed to pay \$1,500.00 per month for the use of the upstairs of a residential home. A security deposit of \$750.00 was paid at that time.

There is no issue of rent arrears and the Landlord's agent states that the Tenants have been good renters throughout the tenancy. The Landlord's agent explained that her son purchased the home a few years ago, and that she is also listed on the title, as she co-signed for the loan. She lives next door in a separate residence.

There was evidence presented by both parties in relation to a tenancy in the basement suite which ended in 2016. The Tenant took the position that the renter was forced to move out and that the Landlord had tried to state that it was voluntary. The Landlord's agent responded that the renter was served a notice to vacate as the Landlord was planning to move into the basement suite; this renter moved out without requiring a hearing, and a statement written by a neighbor, F.B., confirms that the Landlord moved into the basement that summer.

During this time, the Landlord's father installed a gate to connect the rental home with the parent's home next door, so that it was easier for the Landlord and his family to go back and forth between the homes; photographs were submitted as evidence of this arrangement.

At the end of 2016, the Landlord left the residence and was living and working in Thailand for a period of time. He returned to Delta in September of 2017 along with a girlfriend, and they rented a small basement apartment. His health has declined and he wanted a larger space to live in, and decided to move back to his home.

Discussions took place between the Landlord and Tenant which failed to resolve the issue. The Two-Month Notice to End the Tenancy was hand-delivered to an adult living

at the rental property on February 27, 2018 and the notice of the hearing was hand-delivered to the Landlord on March 13, 2018, within the 15 day deadline to file for dispute resolution. The effective date of the notice to vacate is May 1, 2018. The Tenant states that she has lived several years in the upstairs of the home and needs the space to accommodate her 13 year old son (whom she has half-time custody) and her disabled mother; she argues that the Landlord ought to live in the basement suite below.

The Tenant states that her son had surgery on his leg and needs some recovery time and that he is attending a local school until the end of June, making a move by May 1st difficult. She states that the rental market is priced outside her range and she is having considerable difficulty finding new accommodation and asks for more time and a moving allowance; I note that this application was for a cancellation of the notice to end the tenancy and therefore, the issue of reimbursement of expenses is not before me.

Although Landlord's agent confirmed that the Tenant has been a good renter, she is very worried about her own son's health and argued that it would be best for him to live in the home he purchased now that he can afford to pay the mortgage.

There was some discussion regarding the Landlord entering the premises to take photographs and measurements; the Tenant argued that the house, when purchased, would have had measurements of rooms provided and the Landlord's agent responded by stating it had been a private sale and no such records were given.

The Tenant also argued that the Landlord seemed to be unsure of his future plans and that he spoke of moving to Germany; his agent responded by stating that her son hopes one day to upgrade his schooling in Germany but that his short-term plan is to move back home. She stated that her son provided notice to his current landlord, N.B., who provided a written statement to confirm that he had accepted the termination of that tenancy. The Landlord's mother states that her son has slowly been moving his belongings back over to their home in anticipation of moving in this rental property located next door on May 1st.

Analysis

Section 49(1) of the Act states, in part:

"49 ... (2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in

subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit..."

I find that the Landlord has provided at least two months written notice to the Tenants in compliance with section 49 of the Act. The notice, provided on February 27, 2018, states that the Tenants must vacate by May 1st, 2018 as the rental unit will be occupied by the Landlord. Residential Tenancy Policy Guideline #2 defines "good faith" as 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. The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to also establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

The Landlord provided a written statement that under his current circumstances, he would prefer living in his own home as it is larger than his apartment, and that his girlfriend will help with the mortgage payment, making it affordable; notice was provided to his current landlord, who confirmed that the tenancy had ended. I am satisfied that the Landlord intends to reside in the upstairs of his home, the basement suite having been previously rented out to another tenant. There were no verifiable facts presented to me that would support the argument that the rental unit will be used for any other

purpose than to house the Landlord. I find that the notice to end the tenancy was provided to the Tenants in good faith.

Accordingly, the Tenants' application to cancel the notice is dismissed.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on February 27, 2018 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*. Accordingly, the Landlord will receive a formal Order of Possession which must be served on the Tenants. If the Tenants do not vacate the rental unit within the 2 days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenants' application is hereby dismissed, without costs.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant(s). Should the Tenant(s) 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: April 30, 2018

Residential Tenancy Branch