



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 month notice") pursuant to section 49 of the *Act*; and
- A cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 month notice") pursuant to section 47 of the *Act*.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant confirmed receipt of the landlord's 2 month notice on February 14, 2018 and receipt of the landlord's 1 month notice on February 25, 2018. Pursuant to section 89 of the *Act*, the tenant is found to have been duly served with the landlord's notices to end tenancy.

The landlord confirmed receipt of the tenant's application for dispute resolution and evidentiary package. Pursuant to sections 88 & 89 of the *Act*, the landlord is found to have been duly served with these documents in accordance with the *Act*.

The tenant explained that she had been unable to access a large portion of the landlord's evidentiary package because it has been provided to her on a flash drive and by email. The tenant said that two evidentiary "packages" were received. One bundle of papers was placed in her mailbox in "mid-April" and she had physically received a flash drive. The tenant said she was unable to access its content because she did not own a computer and was computer illiterate. The tenant continued by saying that she did not receive any email from the landlord and noted the email provided to the hearing as part of the landlord's application, was in fact her friend's.

Rule of Procedure 3.10.1 states, "To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent." While *3.10.4* states, "Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using *Digital Evidence Details*." After considering the oral testimony of both parties, I find that the landlord has failed to fulfil her duties under *Rule of Procedure 3.10.1* & *3.10.4*. During the hearing the landlord acknowledged uploading the materials to the Portal of the *Residential Tenancy Branch* without any description provided in writing to the tenant and without following the guidelines as prescribed by section 3.10.1. which specifically call for; a description of the evidence, a description of the contents of each file, a time code for the key point in each video recording, and a statement of significant for each digital file. I will therefore not consider the evidence submitted digitally to the tenant or hearing by the landlord.

Issue(s) to be Decided

Can the tenant cancel the landlord's 1 and 2 Month Notices to End Tenancy? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on July 1, 2017. Rent is \$525.00 per month, and a security deposit of \$262.50 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant sought a cancellation of the Notices to End Tenancy that she had received in February 2018. The tenant questioned the good faith of the notices, arguing that they were issued immediately following a February 7, 2018 hearing where an Arbitrator with the *Residential Tenancy Branch* upheld the tenant's application to cancel a 1 Month Notice issued by the landlord.

The landlord disputed that this was this case and argued that she was no longer interested in renting the unit which housed the tenant, and sought to occupy it for her own personal use. Specifically, the landlord said she would use it as a hobby space for quilting and crafting. The landlord said that the space was not suitable as a rental unit and that she would not be renting it out again. The reason cited on the 2 Month Notice served to the tenant on February 14, 2018 was listed 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).

In addition to cancellation of a 2 Month Notice, the tenant sought cancellation of a 1 Month Notice for Cause. The reasons cited on the 1 Month Notice were listed as follows:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: Damage the Landlord's Property and Adversely affect the Quiet Enjoyment, Security, Safety or Physical well-being of another occupant.

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord explained that the tenant had "constantly" housed a large number of persons in the rental unit and that these people had significantly interfered with the landlord. The landlord said that she felt the tenant to be "irrational" and "volatile" and that she had great stress because of the purported "harassing" that she experienced at the hands of the tenant. The landlord said that the tenant had consistently smoked on the property despite agreeing not to in the tenancy agreement, and was sent two letters, on December 7 & 30, 2017 instructing her to stop. The landlord noted that she had not provided any other form of written warnings to the tenant because she did not want to "encourage" the tenant.

The tenant acknowledged that the relationship between the parties was strained and admitted to yelling at the landlord on one occasion but denied ever threatening the landlord. The tenant disputed all of the reasons cited on the 1 Month Notice and said that the only persons she had visit her in the unit were her children, their partners and "a friend over for dinner." Additionally, the tenant said that the previous arbitration had already found in her favour for matters related to the landlord's 1 Month Notice given for "an unreasonable number of people."

The tenant said that she did smoke but never did so in the unit and only in a designated area provided by the landlord who, in fact had given a chair and a cigarette can.

Analysis – 2 Month Notice

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

A claim of good faith requires honesty of intention with no ulterior motive...

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

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

While the landlord argued at the hearing that she intended to occupy and convert the premise from a rental unit to a craft studio, I find that the landlord's intentions are motivated by a dishonest purpose. Sufficient evidence was presented by the tenant that the landlord's primary motivation to ending the tenancy stemmed from her previous failure to end the tenancy by way of a 1 Month Notice. I find that the landlord does not have a "good faith intent" because of the issuance of the 2 Month Notice nearly immediately after the tenant was successful in cancelling the 1 Month Notice. Furthermore, the landlord's issuance of a second, 1 Month Notice, a few weeks after the issuance of the 2 Month Notice, as further evidence that the landlord did not have "good faith" when issuing the notice to end tenancy. I find the landlord has insufficient evidence to prove she is ending the tenancy in good faith, and therefore I allow the application of the tenant and order that the 2 Month Notice to End Tenancy is cancelled and is of no force or effect.

Analysis – 1 Month Notice

The tenant has also applied to cancel a 1 Month Notice issued to her on February 25, 2018. The parties previously had a hearing on February 7, 2018 where the tenant was successful in cancelling a 1 Month Notice issued because the landlord alleged that the tenant had an unreasonable number of occupants in the rental unit. The matter before me today relates to a 1 Month Notice issued because the landlord argued that –

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: Damage the Landlord's Property and Adversely affect the Quiet Enjoyment, Security, Safety or Physical well-being of another occupant.

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

During the hearing, the landlord cited several instances of purported rude and aggressive behaviour she said she experienced at the hands of the tenant. Furthermore, the landlord argued that the tenant had failed to adhere to the terms of the tenancy agreement and regularly smoked on the property. The landlord reported that the tenant had several guests in the property who were frequently hostile towards her, and she described disturbances she experienced from the tenant and her guests.

After considering the evidence presented from both parties, I find that the landlord failed to show that the tenant or a person permitted on the property had engaged in *any* activity which could be considered illegal and failed to demonstrate that an *unreasonable* number of occupants were in the unit. The tenant testified that she lived in the unit on her own, and would on occasion have visitors. There is little evidence that these persons stayed with the tenant for any extended period of time. Furthermore, the landlord failed to show what damage the tenant or her guests had caused to the property.

While the landlord was able to show that the tenant had perhaps broken a term of the tenancy agreement by smoking on the premises, I find that the tenant was not given an

adequate opportunity to address the issue, and I find some evidence that the landlord permitted smoking on the premises, as the tenant informed at the hearing that the landlord had put a chair and a bin for cigarette butts on the property. *Residential Tenancy Policy Guideline #8* states, "To end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing that there is a problem, that they believe the problem is a breach of a material term of the tenancy agreement, that the problem *must be fixed by a deadline included in the letter*, and that the deadline be reasonable, and that if the problem is not fixed by the deadline, the party will end the tenancy. I find that the landlord's failure to adhere to requirements of *Policy Guideline #8* did not give the tenant an adequate opportunity to fix the problem and therefore dismiss this portion of the notice to end tenancy.

This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice was successful.

The tenant's application to cancel the landlord's 1 Month Notice was successful.

This tenancy shall continue until it is ended in accordance with the *Act*.

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: May 9, 2018

Residential Tenancy Branch