



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- Cancellation of a Two Month Notice to End Tenancy for Landlords' Use of Property (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter originated as two separate applications, tenant I.M. and tenant Z.S. have a separate tenancy agreement from tenant M.S. but they all reside in the same house and are related. Both sets of tenants are disputing the 2 Month Notices served on them by landlord P.B. (the "landlord") and have submitted the same evidence. All parties to this dispute agreed to have the matters joined and heard together.

All three tenants and the landlord attend this hearing, which lasted approximately 44 minutes. All attendees were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant I.G. testified that he served each landlord with a separate notice of dispute resolution package by registered mail on April 26, 2018. Tenant I.G. provided the Canada Post Tracking Numbers to confirm these registered mailings. The landlord confirmed receipt of these dispute resolution packages. I find that the landlords were deemed served with these packages on May 1, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when tenants submit an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by landlords I must consider if the landlords are entitled to an order of possession if the Application is dismissed and the landlords have issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to cancel the Two Month Notices to End Tenancy for Landlords' Use of Property (the "Two Month Notices") pursuant to section 49;
2. Are the landlords entitled to an Order of possession for landlords' use of property pursuant to sections 49 and 55 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlords pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. These tenancies began on May 1, 2015 and are currently ongoing. Monthly rent in the amount of \$1,545.00 is payable on the first day of each month by tenants I.G. and Z.S. Monthly rent in the amount of \$772.50 is payable on the first day of each month by tenant M.S.

Separate written tenancy agreements were signed by the landlords and tenants I.G. and Z.S. and the landlords and tenant M.S. respectively. Copies of the tenancy agreements were not provided for this hearing. The landlord personally served tenant I.G. with a Two Month Notice on April 12, 2018. The landlord personally served tenant M.S. with a Two Month Notice on April 12, 2018. Both notices have a stated effective date of June 30, 2018.

The landlord testified that landlord Y.Y. and her nephew and two other students from China are going to move into the property and that is why the landlords issued the Two Month Notice.

The tenants allege bad faith on the part of the landlords and do not think that landlord Y.Y. is actually going to move in. Tenant I.G. testified that the landlords' explanation as to what they were planning on doing with the property has been inconsistent. Tenant I.G. testified that the landlord originally told them they had to vacate the property at the end of April 2018 because the tenants' one-year fixed term leases were up and that the landlords were not interested in re-leasing the property because they had other plans for the rental property. After the tenants disputed the end of the tenancy based on the expiry of the fixed term agreement, the landlords issued them the Two Month Notices. Tenant I.G. testified that in conversations with the landlord, the landlord said that family from China and students were going to move into the house.

The landlord testified that his explanation on issuing the Two Month Notice has been consistent. The landlord testified that initially he thought he could rely on the tenancy agreement which stated that the tenants were to move out at the end of the fixed term. When he learned that the law changed allowing fixed term tenancies to continue on a month to month basis he followed the proper procedure and issued the Two Month Notice. The landlord testified that landlord Y.Y. and students are going to move into the rental property.

Analysis

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit.

Policy Guideline 2 explains the 'good faith' requirement as requiring honesty of intention with no ulterior motive. The landlords must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

I find that there is sufficient evidence that the landlord Y.Y. honestly intends to use the rental unit for herself. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence provided for this hearing. While the tenants argue that the landlords have provided different stories for their intended use of the property in question, I find that the explanations provided by the landlords have been consistent. The fact that the landlord told the tenants that he had plans for his property other than re-leasing it is not inconsistent with landlord Y.Y. moving in, it is just not specific as to the intended use. I find that the landlord has provided a reasonably probable explanation of the landlords' motives for issuing the Two Month Notices. The fact that landlord Y.Y. intends to have other people move into

the rental unit with her, does not negate her ability to issue a Two Month Notice under section 49 of the *Act*.

Based on the foregoing, I find that the tenants are not entitled to a cancellation of the Two Month Notices. Therefore, I dismiss the tenants' applications.

When a tenant's application to dispute a landlord's notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Two Month Notices submitted into evidence by the tenants, I find that the Two Month Notices comply with section 52 of the *Act*. As a result, I find that the landlords are entitled to an order of possession. The order of possession will take effect on June 30, 2018, the effective date on the Two Month Notice.

Conclusion

The tenants' applications are dismissed and the Two Month Notices are upheld.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on June 30, 2018**, which should be served on the tenants. Should the tenants 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: June 7, 2018

Residential Tenancy Branch