



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with the tenant's 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received the 2 Month Notice on April 30, 2018, sent by the landlord by regular mail on April 23, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's property manager (the property manager) confirmed that they received a copy of the tenant's dispute resolution hearing and written package sent by the tenant by registered mail on May 23, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. As the tenant confirmed that they had received the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on or about June 1, 2016 on the basis of a one-year fixed term tenancy agreement. The tenancy has recently converted to a month-to-month tenancy following the

expiration of a second fixed term on May 31, 2018. Monthly rent is set at \$3,730.00, payable in advance by the first of each month. The landlord continues to hold the tenant's \$1,800.00 security deposit paid on May 16, 2016.

The landlord issued a 2 Month Notice on April 23, 2018, seeking an end to this tenancy for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

Based on unsuccessful negotiations between the tenant and the landlord's property manager regarding the landlord's proposed conversion of the garage used by the tenant to a laneway home, the tenant applied to cancel the landlord's 2 Month Notice. The tenant called into question whether the landlord intended in good faith to move into the rental unit, the reason cited on the landlord's 2 Month Notice. The tenant referenced Residential Tenancy Branch Policy Guideline 2 in questioning the good faith of the landlord in issuing the 2 Month Notice.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on July 31, 2018, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that the compensation allowed the tenant pursuant to section 51(1) of the *Act* following receipt of the landlord's 2 Month Notice to End Tenancy will be provided by way of the landlord agreeing to waive the rental charge for the month of July 2018.
3. The landlord agreed to pay the tenant a total of \$1,865.00 by July 31, 2018.
4. Both parties agreed that this tenancy ends in accordance with the 2 Month Notice to End Tenancy issued by the landlord on April 23, 2018.
5. The landlord agreed that no further work will be conducted on the property pursuant to the building permit applied for by the landlord until after this tenancy ends.
6. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises by July 31, 2018, in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenant's favour in the amount of \$1,865.00, only to be used in the event that the landlord does not abide by the provisions of Term 3 of the above-noted settlement agreement. I deliver this Order to the tenant to be served as soon as possible following any failure of the landlord to abide by the provisions of Term 3 as outlined above.

I also order the landlord to refrain from undertaking any work associated with the building permit that the landlord applied for on April 18 until after July 31, 2018, when this tenancy is scheduled to end.

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 28, 2018

Residential Tenancy Branch