



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

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

- an Order of Possession based on a landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49 of the *Act*

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the course of the hearing, the tenant called her brother M.P. as a witness.

The tenant acknowledged receipt of the landlord's 2 Month Notice, along with the landlord's evidentiary package, while the landlord confirmed receipt of the tenant's application for dispute and evidentiary package. I find that all parties were served in accordance with the *Act*.

Issue(s) to be Decided

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

Background and Evidence

The tenant confirmed receipt of a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), after it was served to her on March 27, 2018. The tenant explained to the hearing that her family had occupied the property for 30 years. She said that she had lived in a trailer on the property starting in 2011. The tenant said that

she now lived in the main house on the property and paid monthly rent of \$714.20 with no security deposit collected.

In March 2018, the landlord served the tenant with a 2 Month Notice which stated *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.)*

During the hearing, the landlord explained that he intended to occupy the home in question as he currently lived in the trailer previously occupied by the tenant. The landlord said that this living situation no longer suited his needs and that a large number of renovation works were required in both the home and the trailer. Furthermore, the landlord said that he could not access the back property and pasture without first crossing through the tenant's property, thus forcing him to give 24 hours' notice anytime he wished to go to this back area. The landlord said that he currently had a number of collector cars that are presently stored in a cow barn and that he planned on having these closer to the home so that he could adequately care for them.

The tenant questioned the good faith of the 2 Month Notice issued to her. The tenant and her witness questioned the landlord's standing to issue a 2 Month Notice, arguing that he was not the legal owner and had therefore no right to issue any form of Notice to End Tenancy. The tenant said that she and her family who had lived on the property had previously enjoyed a very good relationship with the landlord's grandmother prior to her death. The tenant and her witness both explained that their family had spent "thousands" of dollars to upgrade the property and she said that the landlord had no urgent need to occupy the home. The tenant's witness also questioned whether the landlord had a duty to issue a 4 Month Notice to End Tenancy, or whether a 2 Month Notice was sufficient.

The landlord disputed that there was any issue regarding the ownership of the property, testifying that his name was on the mortgage and stating that the title was in his name. The landlord said that the roof of the trailer in which he currently lives needs to be replaced due to leaking in the front and back rooms and that an electrical inspection revealed a large amount of service was required. The landlord continued by stating that during the roof replacement, electrical upgrades would be completed and that an electrical permit for the trailer had been secured. He said that he had six months to complete the upgrade and provided the permit number to the hearing. In addition, the landlord said that the home presently occupied by the tenant required a replacement of pony walls, along with upgrades to the plumbing and electrical systems.

The tenant questioned the timing and necessity of these repairs. Both she and her witness said that no leaks were detected when they occupied the trailer over previous years. The tenant expressed a great frustration with the landlord's refusal to negotiate an alternative end of tenancy date. Evidence of this frustration is contained in a May 28, 2018 email that was submitted to the hearing by the tenant. She said this email was unanswered by the landlord.

Analysis

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.

After considering the oral testimony of both the tenant and the landlord, and after having reviewed the evidence submitted at the hearing, I find that the landlord has successfully demonstrated that he truly intends to do what he said on the 2 Month Notice. The landlord was able to provide detailed and consistent testimony that supported his

reasons for wanting to occupy the main home on the property. The tenant sought to establish that the landlord had no sound basis to serve a notice to end tenancy and questioned his ownership on the property; however, no evidence other than oral was supplied to support these allegations. I accept the landlord's testimony that his name appears on both the mortgage documents and on the title of the property. While I understand and appreciate the tenant's frustrations related to her very limited housing options, I must balance these grievances with the landlord's right to occupy his own property. The tenant was unable to produce any documentation that would support her allegation that the landlord did not have ownership of the property, and I accept the landlord's testimony that he is the true owner of the property.

During the hearing the tenant's witness questioned whether the landlord should have served the tenant with a 4 Month Notice to End Tenancy, rather than a 2 Moth Notice. Bill 12 which introduced changes to the Residential Tenancy Act was given Royal Assent on May 18, 2018. Therefore, the 2 Month Notice issued on March 27, 2018 remains valid. The legislation was not retroactive and new 4 Month Notices to End Tenancy forms were created to reflect these changes.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

After reviewing the evidence submitted to the hearing by both parties, I find that the 2 Month Notice dated March 27, 2018 which was disputed by the tenant to be valid.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's 2 Month Notice complies with section 52 of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, April 30, 2018.

This tenancy shall end on June 30, 2018, the final day for which the tenant has paid rent. The tenant must bear the cost of their own filing fee.

Conclusion

The tenant was unsuccessful in her application to cancel the landlord's 2 Month Notice to End Tenancy. I am granting the landlord an Order of Possession to be effective at 1:00 P.M. on June 30, 2018. If the tenant does not vacate the rental unit by 1:00 P.M. on June 30, 2018, the landlord may enforce this Order in 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 25, 2018

Residential Tenancy Branch