



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLANET GROUP PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, CNL, FFT

Introduction

On June 6, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") issued on May 22, 2018, for an order to allow access for the Tenant and their guests and to recover the filing fee for his application. The matter was set for a conference call.

The Landlord and his Property Managers as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary matter

At the outset of these proceedings, the parties testified that they had not exchanged the documentary evidence that I have before me. Both parties were offered the opportunity to adjourn the hearing to allow for the proper exchange of evidence. Both parties declined to adjourn and stated that they wished to proceed with verbal testimony. Both parties testified that they have a copy of the Notice.

I find that the parties have not exchanged their evidence in accordance with the Rules of Procedure. However, I will proceed with this hearing as both parties have agreed to continue and have a determination made based on verbal testimony only.

Additionally, both the Tenant and the Landlord testified that the Tenant is currently living in the rental unit and had full access to the rental property. I find that the Tenant does have access to the rental unit. Therefore, I dismiss the Tenant application for an order to allow access for the Tenant or their guest to the rental unit.

I will proceed with the Tenant's application to cancel the Notice and for the return of his filing fee.

Issues to be Decided

- Should the Notice issued on May 22, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

Both parties testified that the tenancy began on April 1, 2017, as a seven-month fixed term tenancy, that rolled into a month to month in November 2017. Rent in the amount of \$1,450.00, is to be paid by the first day of each month, and the Tenant paid a security deposit of \$725.00 at the outset of this tenancy.

All parties agreed that the Notice was served on the Tenant on May 22, 2018, by Canada Post regular mail. The Notice indicated that the Tenant was required to vacate the rental unit on July 31, 2018. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenant testified that he believes that the Landlord does not live in Canada and is therefore not going to use the property for the stated purpose on the Notice. The Tenant testified that he has copies of tickets for the Landlord that show he will be leaving the country in August 2018. The Tenant testified that he believes the Landlord is not going to live in the rental unit.

The Landlord testified that he would be using the property for his own use. The Landlord testified that he does have plans to travel in August, but this will not affect his use of the

property when he returns. The Landlord stated that he intends to use the property for himself, his wife and his two sons.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. In this case, I find the Tenant did dispute the Notice within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith is 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. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

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

I acknowledge the Tenant's testimony that he believes the Landlord does not live in Canada full time. However, section 49(3) of the Act states that the Landlord only needs to occupy the property for his own use, there is no requirement that the property is the Landlord's primary residence.

Landlord's notice: landlord's use of property

“(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 accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Therefore, I dismiss the Tenant's application to cancel the Notice issued on May 22, 2018.

I find the Notice issued on May 22, 2018, is valid and enforceable.

Under section 55 of the Act, if the tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on July 31, 2018.

As the Tenant has not been successful in his application to cancel the notice, I find the Tenant is not entitled to recover the filing fee for this hearing.

Conclusion

I dismiss the Tenant's application to cancel the Notice issued on May 22, 2018.

I grant an Order of Possession to the Landlord effective not later than 1:00 p.m. on July 31, 2018. The Tenant must be served with this Order. 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.

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: July 24, 2018

Residential Tenancy Branch