



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL/MNDCT

Introduction

On May 18, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 2-Month Notice to End Tenancy for Landlord’s Use, dated May 6, 2018 (the “Notice”), and a Monetary Order for compensation for the loss of quiet enjoyment. The matter was set for a participatory hearing via conference call.

The Landlord and her representatives and the Tenant and her representative attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 Matters

The Landlord speaks very little English and submitted a signed Affidavit as evidence that Landlord KY referred to throughout the hearing.

Both the Landlord and the Tenant submitted and exchanged late evidence. They agreed that the evidence had been exchanged and that they had had time to review; therefore, the evidence was admitted for this hearing.

I note that Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a landlord, I

must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with the Act.

Issues to be Decided

Should the Notice be canceled?

Should the Tenant receive a Monetary Order for compensation for the loss of quiet enjoyment?

Should the Tenant be unsuccessful in canceling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant and the Landlord agreed on the following terms of the Tenancy Agreement and the Notice:

The fixed-term tenancy began on June 2, 2017 and continued as a month-to-month tenancy after December 2, 2017. The Tenant paid \$850.00 per month for the self-contained rental unit that was on the first floor below the Landlord's residence. The Landlord collected and still holds a \$400.00 security deposit.

The Notice was received by the Tenant on May 6, 2018 and indicated that the rental unit will be occupied by the Landlord's close family member. The effective vacate date on the Notice was for July 31, 2018.

Landlord's evidence:

Landlord KY stated that the Landlord's eldest son is a permanent resident of Canada and is currently living in China. The son used to live in Vancouver from 2005 to 2017 and hopes to move back home and into the rental unit in August of 2018. They do not have plane tickets as potential proof for the move as they are waiting to confirm the availability of the rental unit based on the outcome of this hearing.

Witness JDH testified that his brother was planning to come back to his mother's home in August of 2018.

The Landlord, in her affidavit, reiterated that her eldest son is returning from China and needs a place to stay. She stated that she has no plans to sell the (rental) property or to rent out the rental unit to a non-family member.

The Landlord, in her affidavit, stated that she, as the Landlord, has never asked the Tenant for an increase in the monthly rent. The Landlord acknowledged that on or around December 2017, her husband's English-speaking friend, who occasionally assisted the Landlord, proposed to the Tenant that she pay \$100.00 more per month for rent. The Landlord stated that she did not ask her husband's friend to do this. Neither herself, her husband, nor his friend pursued the issue and the Landlord has always received \$850 per month from the Tenant for rent.

Landlord KY and the Landlord recognized that they will have to compensate the Tenant for the last month's rent if the Notice is upheld.

The Landlord is seeking an Order of Possession for the rental unit.

Tenant's Evidence:

The Tenant testified that sometime in December 2017, she was approached by one of the Landlord's family members about the rent being raised by \$100.00. The Tenant responded by writing a letter to the Landlord, dated January 1, 2018, and stating that the Landlord had to wait for one year before she could increase the rent and that it could only be 3% of the current rent. The Tenant encouraged the Landlord to enquire at the "Landlord and Tenancy Office" for more information.

The Tenant kept paying her monthly rent of \$850.00 and then received the Notice on May 6, 2018 and applied for Dispute Resolution on May 18, 2018.

The Tenant stated that she feels that she is being punished for not agreeing to the rent increase in December 2017 and that the Notice is unfair and should not be enforced.

The Tenant submitted evidence and testified that, although she is happy living in the rental unit, there are issues that she has not complained about such as the television service not being included in the rent, that there are issues with the plumbing and that the Landlord talks very loudly early in the morning. The Tenant stated that she is very stressed about this situation and is claiming \$5,000.00 in compensation.

Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 49(1) of the Act defines “close family member” as the Landlord’s parent, spouse or child.

The *Residential Tenancy Policy Guidelines #2* (the “Guidelines”) discusses the legal concept of good faith. The Guidelines refer to *Gichuru v Palmar Properties Ltd*, 2011 BCSC 827 for the suggestion that good faith requires honesty of intention with no ulterior motive.

I accept the Landlord’s and Witness JDH’s testimony that the Landlord intends on moving her eldest son into the rental unit once it is vacant.

The Tenant attempted to bring the good faith intent of the Landlord into question by relating the Notice to a conversation that occurred more than four months prior about a potential rent increase. As this was the only submission the Tenant provided, I find that she has failed to provide sufficient evidence to support that the Landlord is intending to act dishonestly or has an ulterior motive.

I find that the Landlord’s Notice complies with Section 52 of the Act and that she intends in good faith for her son to occupy the rental unit. As a result, I must uphold the Notice and dismiss the Tenant’s Application to cancel the Notice.

Section 55(1) states that I must grant the Landlord an Order of Possession for the rental unit if the Landlord’s Notice complies with Section 52 and the Tenant’s Application is dismissed, or the Landlord’s Notice is upheld. Therefore, I find that the Landlord should be issued an Order of Possession for the rental unit.

In relation to the Tenant’s claim for compensation for the loss of quiet enjoyment, the Tenant failed to provide sufficient evidence that the Landlord has breached the Act or the Tenancy Agreement, nor has she established a loss or justification for \$5,000.00 in compensation. For these reasons, I dismiss the Tenant’s claim for compensation with leave to reapply.

Conclusion

In accordance with Section 62(4) of the Act, I dismiss the Tenant's Application for a Monetary Order for compensation for the loss of quiet enjoyment with leave to reapply.

In accordance with Section 55 of the Act, I am granting the Landlord an Order of Possession to be effective at 1:00 p.m. on July 31, 2018. 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 05, 2018

Residential Tenancy Branch