



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, CNR, OLC, ERP, RP, AAT, RR

Introduction

The tenant filed an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated May 8, 2018 (“2 Month Notice”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that was not dated (“10 Day Notice”), for an order for emergency repairs for health or safety reasons, for an order for regular repairs to the unit, site or property, for a monetary claim of \$1,550.00, for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, for a rent reduction, and for an order to be able to access the unit or site for the tenant or the tenant’s guests.

The tenant and the landlords attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties on several occasions. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to set aside the 2 Month Notice and the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 2 Month Notice and the 10 Day Notice at this proceeding. The balance of the tenant’s application is dismissed, **with leave to re-apply**.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Should the 2 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 1, 2018. Monthly rent of \$1,550.00 is due on the first day of each month. There is no dispute that a flood occurred during the tenancy and that the tenant was out of the rental unit for a short period of time between May 1, 2018 and May 26, 2018.

At the outset of the hearing, the 10 Day Notice was cancelled as the parties were advised that I found the 10 Day Notice was not a valid 10 Day Notice as the landlord failed to sign and date the 10 Day Notice which is required pursuant to section 52 of the *Act*. As a result, the 10 Day Notice is of no force or effect.

Regarding the 2 Month Notice, the tenant confirmed that she was served on May 8, 2018 with the 2 Month Notice dated May 8, 2018. The effective vacancy date on the 2 Month Notice is listed as July 10, 2018 which the parties were advised automatically corrects under section 53 of the *Act* to July 31, 2018 as rent is due on the first day of each month. The tenant disputed the 2 Month Notice on May 11, 2018 which was within the allowable time limitation under the *Act* of 15 days. Page two of the 2 Month Notice indicates the reason as "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."

The tenant indicated that she was disputing the 2 Month Notice because she did not believe the landlord would be moving their entire family into the rental unit. The landlords testified that the landlords intention is not to move the entire family into the rental unit, and that the male landlord intends to occupy the rental unit which is the lower portion of the rental home and work on it as necessary. In addition, the landlords testified that they are finding having the entire home tenanted to be too much stress and that her husband plans on looking for work closer to the rental property to reduced their stress.

The tenant stated that she does not believe the landlords intend to move into the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice by stating that she did not believe the landlords were going to move into the rental

unit. The reason indicated on the 2 Month Notice is “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.” The landlords testified that the male landlord intends to occupy the rental unit and to work on the rental unit as necessary.

As the word “occupy” is included in the reasons stated on the 2 Month Notice, I refer to the Black’s Law Dictionary sixth edition for the legal meaning of “occupy”.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[My emphasis added]

Given the above, as Black’s Law Dictionary does not define occupy as to reside or to live I find the reason as affirmed by the male landlord to meet the definition of occupy which includes “to hold possession of”. Therefore, I find the 2 Month Notice is valid and advised both parties that the landlords would not be able to re-rent the rental unit for a period of at least six months starting July 31, 2018. In addition, the parties were advised that with a 2 Month Notice, comes compensation for the tenant in the amount of one month’s rent which in this case would be \$1,550.00. While I make no monetary order or findings from a monetary perspective, the landlords are reminded of their requirements under the *Act* when a 2 Month Notice is served and upheld as valid.

Based on the above and on the balance of probabilities, I find that the landlords have met the burden of proof and I find the 2 Month Notice issued by the landlords to be valid. The landlords have the right to stop being a landlord and to take over the rental unit for the stated use in the 2 Month Notice. Therefore, I **dismiss** the tenant’s application to cancel the 2 Month Notice and I **uphold** the 2 Month Notice issued by the landlord with a corrected effective vacancy date of July 31, 2018. Section 55 of the *Act* applies and states:

Order of possession for the landlord

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 to the landlord an order of possession of the rental unit if**

(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.**

[My emphasis added]

Given the above and taking into account that I find the 2 Month Notice complies with section 52 of the *Act*, I grant the landlords an order of possession effective **July 31, 2018 at 1:00 p.m.**, which is the effective date on the 2 Month Notice.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice without leave to reapply. I uphold the 2 Month Notice issued by the landlords.

The portion of the tenant's application mentioned above is dismissed with leave to reapply.

The 10 Day Notice is cancelled and is of no force or effect.

The landlords have been granted an order of possession effective July 31, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ends on July 31, 2018.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 11, 2018

Residential Tenancy Branch