



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL DRI MNDCT RR

Introduction

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

- cancellation of a landlord's 2 Month Notice to End Tenancy for Landlord's Use of property pursuant to section 49 of the *Act*;
- dispute of an additional rent increase pursuant to section 43 of the *Act*;
- a Monetary Award pursuant to section 67 of the *Act*; and
- a reduction in rent for facilities agreed upon but not provided pursuant to section 65 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. The landlord was represented at the hearing by his daughter, A.G. (the "landlord").

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 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 for Landlord's Use of Property ("2 Month Notice")?

Should the tenant be granted a monetary award?

Can the tenant reduce the rent for services not provided?

Can the tenant dispute an additional rent increase?

Background and Evidence

Testimony from both parties explained this tenancy began on November 17, 2016. Rent is \$650.00 per month, and a security deposit of \$300.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant acknowledged receipt of the landlord's 2 Month Notice after it was given to him on May 4, 2018. The reason cited on the 2 Month Notice given to the tenant was listed as follows; *The rental unit will be occupied by the landlord or the landlord's close family member.*

The landlord's daughter explained the respondent's father (the father of the owner and named landlord) intended to occupy the rental unit. The landlord stated the respondent's father had arrived to Canada on June 17, 2018 and intended to occupy the rental unit "for the foreseeable future." The landlord said the respondent's father is a Canadian permanent resident who had come to Canada with the intention of living in the basement of his son's (the respondent) home. A letter from the respondent's father was provided as part of the landlord's evidentiary package. This letter explained use and access to the suite was required due to mobility issues which were affecting the respondent's father.

The landlord's daughter stated notice was given by the tenant on April 25, 2018 that he intended to vacate the property. On May 2, 2018 the landlord took steps to re-rent the suite and on May 3, 2018 a prospective tenant was identified by the landlord. This person withdrew their application to move to the rental unit and informed the landlord on May 4, 2018 that they were no longer interested in the suite. The landlord continued by explaining that her father and grandfather had a discussion via telephone on either May 3 or May 4, 2018 where they agreed that the elder would occupy the rental unit and no further steps would be taken to re-rent the suite.

The tenant questioned the good faith of the 2 Month Notice issued to him. He questioned why the landlord would feel the need to re-rent the suite online if his true intention was to have his father occupy the rental unit. In addition, the tenant alleged the landlord never mentioned this person moving into the rental unit prior to the issuance of the two month notice. The tenant said he only gave notice to vacate the suite because he had felt continued harassment and frustrations from the landlord. The tenant alleged the landlord had offered the tenant continued use of the suite if he agreed to sign a new tenancy agreement for increased rent. In his written evidence, the landlord acknowledged that he had offered the suite to the tenant at a new rent of \$800.00 per month but he explained that he considered this to be a new tenancy because the tenant had given his notice and informed the landlord of his intention to vacate the rental property.

In addition to an application to cancel the landlord's 2 Month Notice, the tenant has applied for a monetary award of \$3,582.00 for loss of peace and quiet enjoyment of the rental unit due to alleged threats and denial of internet access. The tenant is also seeking a reduction in rent of

\$70.00 per month for repairs, services or facilities agreed upon but not provided. Specifically, the tenant alleged that the landlord withdrew wifi by switching services providers and then failing to give the tenant the new wifi codes. The tenant is also seeking a return of rent which he said he overpaid. The tenant explained that seven months into the tenancy the rent increased from \$600.00 to \$650.00. The tenant said this increase represented an 8.33% increase in rent, which is over the allowable 3.7% permitted under the Act.

Analysis

I will begin by analyzing the tenant's application to cancel the landlord's 2 month notice and then turn my attention to the portion of the tenant's application related to monetary compensation.

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 carefully considering the submissions from both parties and having reviewed the evidence submitted at the hearing, I find the landlord has sufficiently demonstrated that he does intend to use the rental unit for the purpose stated on the 2 Month Notice, and that the respondent's father will occupy the rental unit. I find the plane ticket showing the arrival of the respondent's father to Canada, along with the submission of his immigration documents to be compelling

evidence of the landlord's intention. I do not place great weight on the tenant's questioning of that the landlord's motives related to posting of the rental suite on craigslist and his argument that the landlord had another reason to have the tenant vacate the residential premises.

The tenant gave the landlord notice of his intention to vacate the suite at the end of April 2018. The tenant then changed his mind and informed the landlord that he did not in fact wish to vacate the suite. The landlord said that he would consider offering the tenant a new tenancy at an elevated rental rate as he was seeking to find a new tenant. The actions taken by the landlord are all steps which can reasonably be anticipated by any landlord looking to re-rent a suite following notice being given to them. For these reasons, I dismiss the tenant's application to cancel the 2 Month Notice.

The second portion of the tenant's application concerns a monetary award for \$3,652.00. The tenant said this represented; a refund of excess rent paid from June 2017 onwards, a refund for a separate internet connection, a refund for a heater that was purchased and compensation for loss of quiet enjoyment related to the tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

The tenant is seeking \$454.00 for excess rent collected by the landlord from June 2017 to May 2018. The tenant argued that the landlord increased the rent over the allowable limit as prescribed by the *Act*. After reviewing the figures submitted at the hearing, I find that the tenant has sufficiently demonstrated that rent was increased beyond the allowable 3.7% from June 2017 onwards. I therefore award the tenant a return of these funds. As the tenant continues to occupy the rental unit, the tenant is entitled to a monetary award of \$495.00 representing rent overpayments from June 2017 to June 2018.

The tenant has applied for a return of \$38.00 related to a heater he had to purchase because he alleged that no heat was supplied to the rental unit by the landlord. A review of the evidence submitted to the hearing by the landlord showed that in fact the heater was broken and steps were taken to address this problem as quickly as possible. The landlord submitted receipts and invoices related to the repair of the heating unit and fireplace. I find that sufficient steps were taken by the landlord to address this issue and decline to award the tenant a return of funds related to the purchase of a heater.

The tenant is also seeking a monetary award related to the internet connection which he says was suspended during the course of the tenancy because of a change in service provider. No written tenancy agreement was signed by the parties and the landlord argued that at no point was the tenant's internet usage suspended, stating that the service provider was only switched in April 2018 when the tenant was set to vacate the suite. A copy of the Telus work order was uploaded as part of the landlord's evidentiary package. After a close review of all documentation submitted to the hearing, I find insufficient evidence was supplied to the hearing by the tenant demonstrating that internet was suspended at any other time than the date provided by the landlord. Again, as explained above, the landlord had been provided notice of the tenant's intention to vacate the suite and could reasonably be expected to switch internet providers at that time. I find that the tenant has failed to show that he suffered a loss as a result of the landlord's actions, after he had given notice to leave the rental unit.

The final portion of the tenant's application for a monetary award relates to compensation of \$3,000.00 for loss of quiet enjoyment. Section 28 of the *Act* provides that, "the tenant is entitled to quiet enjoyment including, but not limited to, rights to the following reasonable privacy and freedom from unreasonable disturbance."

This issue is expanded upon in Section 6 of the *Residential Tenancy Policy Guideline* which says, "A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these...Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis of a breach of the entitlement to quiet enjoyment." I find that the tenant has failed to show that his interactions with the landlord amounted to *substantial interference* caused by *frequent and ongoing unreasonable disturbances* created by the landlord. The tenant expressed a frustration with access to the internet and the landlord's personal interactions; however, I find that these issues arose as a result of the tenant's decision to give the landlord notice of his intention to vacate the property. Little evidence was presented that the landlord made any concerted efforts to unreasonably disturb the tenant. For these reasons, this portion of the tenant's application is dismissed.

Conclusion

The tenant was unsuccessful in his 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 July 31, 2018. If the tenant does not vacate the rental unit by 1:00 P.M. on July 31, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant was partially successful in his application for a monetary award. The tenant is granted a monetary order of \$495.00. The tenants are provided with a Monetary Order in the

above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2018

Residential Tenancy Branch