



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he personally served the landlord the notice of dispute resolution package on June 3, 2018. The landlord confirmed receipt of the dispute resolution package in person from the tenant on June 3, 2018. I find that the landlord was deemed served with this package on June 3, 2018, in accordance with section 89 of the *Act*.

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*.

Preliminary Issue

“Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice, pursuant to section 49 of the *Act*?
2. If the tenant's application is dismissed or the Two Month Notice is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2012 and is currently ongoing. Monthly rent in the amount of \$575.00 is payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant to the previous landlord. A written tenancy agreement was signed by the tenant and the previous landlord and a copy was submitted for this application.

The landlord testified that he purchased the rental property in question in the beginning of April 2018 with the intent of living in the main portion of the house with his family and having his parents live in one of the two basement suites and having his wife's parents (the "in-laws") live in the other basement suite. The landlord testified that prior to his relatives moving in, he plans on completing a few renovations which he estimated should take no longer than 15 days.

The landlord testified that on April 30, 2018 he left a letter addressed to the tenant on the tenant's door informing the tenant that the tenant would need to vacate the rental property as he wanted to use the suite for his "own use". The tenant acknowledged receipt of the April 30, 2018 letter on or around April 30, 2018.

The landlord testified that on May 27, 2018, he personally served the tenant with the Two Month Notice with an effective date of July 31, 2018. The tenant confirmed that he received the Two Month Notice from the landlord in person on May 27, 2018.

The Two Month Notice stated the following reasons for the issuance of the notice:

- 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).

The tenant testified that he didn't think that the landlord was planning on using the rental property according to the reason set out in the Two Month Notice. The tenant testified that the previous owner of the house had told him that the new owner, the landlord, was keeping the tenants in both basement suites.

The tenant also testified that the first time he asked the landlord who was moving into the rental suite, the landlord told him that his brother was moving in. The tenant testified that when he received the Two Month Notice from the landlord and the landlord's brother that the brother told him that he was moving in but the landlord corrected his brother and stated that his in-laws were moving in.

The landlord denies ever saying that his brother was moving into the rental unit. The landlord testified that his brother owns his own house and has no need to move in with him.

The tenant also testified that he thought the rental property was too small for the landlord's in-laws to live in.

The landlord testified that his in-laws are currently renting a suite in the area and have already provided their one month notice to end tenancy to their landlord (the “parental landlord”) effective July 31, 2018. The parental landlord testified that she has rented a suite to the landlord’s in-laws for the past two years and that she received a one month notice to end tenancy effective July 31, 2018 from them. The parental landlord also testified that after receiving the one-month notice, she received a request for a 15-day tenancy extension which she granted.

Analysis

Based on the Two Month Notice entered into evidence by the tenant and the testimony of both parties, I find that the Two Month Notice was served to the tenant on May 27, 2018, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit.

Policy Guideline 2 explains the ‘good faith’ requirement as requiring 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.

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for his in-laws. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence provided for this hearing.

While the tenant argues that the landlord has been inconsistent regarding who is moving into the rental property, I find that the testimony of the in-law’s current landlord confirms and supports the landlord’s testimony that his in-laws are moving in.

Based on the foregoing, I find that the tenant is not entitled to a cancellation of the Two Month Notice. Therefore, I dismiss the tenant’s application.

When a tenant’s application to dispute a landlord’s notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord’s notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Two Month Notice submitted into evidence by the tenant, I find that the Two Month Notice complies with section 52 of the *Act*. As a result, I find that the

landlord is entitled to an Order of Possession. The Order of Possession will take effect on July 31, 2018, the effective date on the Two Month Notice.

Conclusion

The tenant's application to cancel the Two Month Notice is dismissed without leave to reapply and the Two Month Notice is upheld.

The remainder of the tenant's application is dismissed with leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on July 31, 2018**, which should be served on the tenant. 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 20, 2018

Residential Tenancy Branch