



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 5, 2018 ("2 Month Notice"), pursuant to section 49;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2018 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant, the landlord, the landlord's agent and the landlord's lawyer 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 landlord confirmed that his lawyer had permission to speak on his behalf at this hearing. The landlord's agent did not testify at this hearing. This hearing lasted approximately 79 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 2 Month Notice on May 9, 2018, which the landlord said was posted to the tenant's rental unit door on May 5, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on May 9, 2018.

As noted below, I have made a decision and issued an order of possession based on the 2 Month Notice, which was issued to the tenant on May 5, 2018, well before the 10 Day Notice was issued on June 2, 2018. I do not accept the landlord's evidence that the 10 Day Notice "supersedes" the 2 Month Notice because the effective date on the 10 Day Notice is on June 12, 2018, which is earlier than the effective date on the 2 Month Notice of July 31, 2018. Accordingly, I do not need to consider the tenant's application to cancel the 10 Day Notice, dated June 2, 2018; this application is dismissed with leave to reapply.

Although the parties made submissions regarding the landlord's 10 Day Notice, dated July 6, 2018, since the tenant did not apply to dispute it and did not amend this current application to include it, I decline to make a determination about this notice. The landlord informed me that it is subject to a separate direct request application at the Residential Tenancy Branch and provided the file number, which is contained on the front page of this decision.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 15, 2015 for a fixed term ending on January 15, 2016, after which it became a month-to-month tenancy. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit, which is a coach house.

The landlord provided a copy of the 2 Month Notice, which indicates an effective move-out date of July 31, 2018. The landlord identified the following reason for seeking an end to this tenancy on page 2 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 landlord testified that he requires the rental unit, which is a coach house at the same property where the landlord currently lives, for his own personal use. He said that he has two children, aged four and eight years old, who are older and more active who need more space to play, since everything in their current home is in very tight quarters. He stated that he does not require the rental income from the tenant's rental unit because he has a growing business that pays for his expenses. He provided copies of his mortgage documents and text messages with his mortgage advisor about this. He claimed that he tried to offer the tenant another fixed term tenancy agreement with the same rent of \$800.00, where the tenant would have some extra time to vacate the rental unit at the end of a fixed term, so the landlord could personally use this property for his children, but the tenant refused.

The landlord testified that he asked other tenants who live in the basement at the same property where the landlord lives upstairs, to vacate so he can use it for this same reason. He provided a copy of their two written tenancy agreements, showing that the rent remained the same at \$950.00 throughout their tenancy from September 1, 2017 to date. He said that those tenants are required to vacate by October 1, 2018, at the end of their fixed term, as indicated on their second most recent tenancy agreement. He explained that those tenants are looking for a new place now and they will likely be leaving earlier than the above date.

The landlord said that he has kept the tenant's rent the same at \$800.00 for the last three years since he moved in on July 15, 2015. He maintained that he is not trying to increase the tenant's rent. He stated that he did not serve a 10 Day Notice when the tenant failed to pay May 2018 rent because he wanted to resolve the issue with the tenant instead of coming to the Residential Tenancy Branch. He maintained that he issued two 10 Day Notices to the tenant for failure to pay June and July 2018 rent, but no other notices to end tenancy. The tenant acknowledged receiving both notices from the landlord.

The tenant disputes the landlord's 2 Month Notice because he said that the landlord wants to increase his rent beyond the allowable *Residential Tenancy Regulation* amount of 4% for 2018. He said that the landlord offered him a new fixed term tenancy agreement only if he paid a higher rent because the landlord told him that there was

higher rent in the neighbourhood, so he assumed the landlord wanted to “capitalize” on this. He stated that the landlord told him that if he did not agree to the rent increase, the landlord wanted to move his mother into the rental unit. The landlord denied this, stating that his mother lives out of country and did not have a visa to live in this country. The tenant responded by stating that was one of the reasons why he was disputing the 2 Month Notice because he knew the landlord’s mother lived out of country and could not live here. The tenant provided copies of text messages between himself and the landlord, indicating that the landlord wanted him to sign a new fixed term tenancy agreement; however, the tenant said that the rent increase was not included in the messages, as that was part of a verbal conversation only.

Analysis

Overall, I found the landlord to be a more credible and forthright witness than the tenant. I found that the landlord provided his testimony in a calm and candid manner and did not change his testimony throughout the hearing. I found that the landlord’s written evidence supported his testimony. Conversely, I found the tenant to be a less credible and inconsistent witness. The tenant became defensive and evasive when asked questions by me and the landlord’s lawyer, only answered selected questions, and frequently changed his testimony throughout the hearing.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on May 9, 2018. The tenant did not dispute the notice in time, as he filed his application almost one month later on June 4, 2018. Therefore, the tenant is presumed to have accepted that the tenancy ended on the effective date of the notice, July 31, 2018.

The tenant said that he applied late because he was in a car accident prior to June 2018, so he could not apply on time. He did not provide any medical or other documentation to show his inability to apply within time or his inability to have an agent to apply on his behalf. The tenant did not apply for more time to cancel the landlord’s 2 Month Notice. I find that the tenant did not provide exceptional circumstances as to why he applied late, as required by section 66 of the *Act*.

I find that the landlord issued the 2 Month Notice in good faith for a valid reason. Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

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.

I accept the landlord's testimony that he requires the rental unit for his own personal use so that his young, active children can have more space to play and since the landlord does not require the additional rental income. I accept the landlord's documentary evidence that the tenants of the basement of the same property are being asked to leave so that the landlord can use the basement space in the same property where he currently lives. I accept that the landlord has not increased the tenant's rent during this entire tenancy of over three years. I find that the tenant did not provide sufficient evidence to show that the landlord did not issue the 2 Month Notice in good faith, that he was trying to move his mother into the unit, or was trying to increase the tenant's rent as the tenant's text messages did not show this.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends in good faith to occupy the rental unit. I find that the landlord has met his onus of proof under section 49(3) of the *Act*. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

Accordingly, I grant an **Order of Possession to the landlord 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.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the 2 Month Notice, dated May 5, 2018, and to recover the \$100.00 application filing fee, is dismissed without leave to reapply.

I grant an **Order of Possession to the landlord 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.

The tenant's application to cancel the 10 Day Notice, dated June 2, 2018, is dismissed with leave to reapply.

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 26, 2018

Residential Tenancy Branch