



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR DRI

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant disputing a rent increase and seeking orders cancelling a notice to end the tenancy for landlord's use of property and a notice to end the tenancy for unpaid rent or utilities.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties also each called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, and all evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that rent has been increased contrary to the *Residential Tenancy Act* and the regulations?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?

Background and Evidence

The landlord testified that this month-to-month tenancy began about 4 years ago, and the tenant still resides in the rental unit. Rent in the amount of \$625.00 per month was

originally payable on the 1st day of each month, which has increased during the tenancy and is now \$700.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$312.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a bachelor suite in the landlord's house, and the landlord and spouse also live in the home. A copy of the tenancy agreement has not been provided as evidence for this hearing.

The landlord further testified that on May 31, 2018 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by handing it to the tenant's mother when she paid the tenant's rent. The landlord had the form ready, and the tenant's mother accepted it saying that she was the tenant's Social Worker now because he no longer had one. The landlord also put another copy through the door of the rental unit. A copy has been provided for this hearing, and it is dated May 31, 2018 and contains an effective date of vacancy of July 31, 2018. The reason for issuing it states: "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's daughter (RM) separated from her husband about a year ago and is attending school in Vancouver. The landlord has been paying her rent for at least 11 months. The daughter is now doing a practicum and when finished will be moving into the rental unit.

The landlord further testified that the tenant's mother has been writing letters to the landlord accusing the landlord of owning 10 houses, and other lies, including an allegation that she overheard the landlord's wife talking to a daughter about using the rental unit for another purpose.

The landlord further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 4, 2018 personally by the landlord's daughter. A copy has been provided for this hearing, and it is dated July 4, 2018 and contains an effective date of vacancy of July 17, 2018 for unpaid rent in the amount of \$700.00 that was due on July 1, 2018. The tenant apologized when he received it but never paid the rent.

With respect to rent increases, the landlord testified a lot of people have been coming and going from the rental unit and some stay over night. Never a single day has gone by that there have been less than 2 people in the rental unit. When the landlord talked to the tenant about it, the tenant gave the landlord's wife \$700.00. The landlord has never served a Notice of Rent Increase, and his wife collects the rent.

The landlord's witness is another daughter of the landlord, and testified that her sister has been in a stressful situation for awhile and is going to school in Vancouver. She has separated from her husband, and will be finished her practicum at the end of July, 2018. The sister suffers from depression and anxiety and needs family support, and the landlord needs support as well.

There are 3 daughters: the witness (KS), the sister who is moving into the rental unit (RM) and the youngest sibling (JA) who lived with the landlord until January when she bought her own house. The witness and JV have been helping their father who suffers from short term memory loss.

The witness has seen the letters of the tenant's mother, and testified that the accusations of the landlord owning 10 houses, or 5 houses, are not true. The landlord owns 1 other house which is also rented. The witness was present during a conversation between the landlord and the tenant's mother, wherein the landlord said that if another suite becomes available before the effective date of the Two Month Notice to End Tenancy for Landlord's Use of Property, he would let the tenant know, but there is no obligation on the landlord to do so, and no promises were made.

The tenant has not paid rent for July, 2018, and the landlord is aware that if the tenant moves out, he won't have to pay, but while this dispute is outstanding, the tenant has to pay rent, and then the landlord will be required to pay the compensation at the end of the tenancy.

The tenant testified that the tenancy started on January 22, 2015 and rent was \$625.00 per month. The landlord was going to the tenant all the time, and the tenant has called police for the landlord entering while drunk. The landlord is a drunk, violent person, and the tenant didn't have anywhere else to go. The tenant paid the increase under pressure, and believes that started on May 1, 2017.

The tenant was approached by the landlord and verbally told that the rental unit was needed for a wedding for 3 weeks. Later he was told that a daughter (JA) was moving in, and then it turned into 25 people were going to stay for the wedding. It had nothing to do with the daughter (RM). The landlord was really drunk.

The tenant also denies that the landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property through the door.

The tenant didn't pay the rent because after he was given the heads-up from his mother that she had received the Two Month Notice to End Tenancy for Landlord's Use of

Property, the tenant referred to the Residential Tenancy Website and interpreted it to mean that he didn't have to pay it. The tenant also testified that he didn't pay the rent because of the illegal rent increase. If he was going to be evicted at the end of the month of July, he'd get the last month free or be entitled to set off the rent increase.

The tenant's witness is the tenant's mother and testified that the tenant told her he was going to lose his suite, and that he had been told rent would go up to \$750.00 per month. He also told the witness that during discussions, the parties mutually agreed that the tenant could manage \$700.00 per month. He made that agreement under duress and pressure; he didn't want to lose his home.

The tenant had also texted the witness saying that he had been told by the landlord that he had to leave in 45 days, and the tenant was upset. The witness called the landlord's wife who said it was true because they wanted the suite for a wedding for out-of-town guests.

On May 31, 2018 the witness went to pay the rent and spoke with both the landlord and the landlord's wife and asked them to put it in writing. They said it was for guests, for 3 weeks, and then their daughter (JA) was going to move in for some time. The witness took the Notice and left.

The witness visits her son about once per week and pays the tenant's rent. The tenant was not served with the Two Month Notice to End Tenancy for Landlord's Use of Property to the best of the witness' knowledge.

There are 2 basement suites in the rental home, and the landlords reside in the upper level as well as their adult children sometimes. The tenant in the other basement suite and the landlord's daughter were overheard by the tenant in a conversation, wherein the landlord's daughter said she wasn't moving in.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must be able to demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

A notice to end a tenancy given by a landlord must be served in one of the following ways:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

In this case, I am not satisfied that the landlord placed a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property in the door of the rental unit. There is no question that a copy was given to the tenant's mother, but the tenant's mother does not reside with the tenant. Therefore, I am not satisfied that it was served in accordance with the *Residential Tenancy Act* and I cancel it.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the law says that a tenant has 5 days to pay the rent or dispute it once served. In this case, it was served on July 4, 2018, and the tenant disputed it on July 9, 2018 by amending the

application disputing the Two Month Notice to End Tenancy for Landlord's Use of Property. However, the tenant did not pay the rent.

The tenant testified that he withheld rent because of the rent increase. The *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. If the tenant is entitled to recovery of any of it, that's a matter for dispute resolution.

The tenant also testified that he understood from the Residential Tenancy Branch Website that he could withhold rent due to the 2 Month Notice.

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Since the tenant disputed the Two Month Notice, there was no determination of when the last month's rent was. I find that the tenant had no color of right to withhold rent, and I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. Since the effective date of vacancy has passed, I grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

With respect to the rental increase, the *Act* is very specific:

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3),
- or
- (c) agreed to by the tenant in writing.

The landlord at no time served a notice of rent increase or obtained the tenant's agreement in writing to increase it. I find that the landlord has increased rent contrary to the Act and the regulations. The tenant has not applied for monetary compensation, and I leave it to the tenant to do so. The landlord has not applied for monetary compensation for unpaid rent, and I leave it to the landlord to do so.

Further, the landlord currently holds a security deposit in trust on behalf of the tenant and I order that parties deal with it in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated May 31, 2018 is hereby cancelled.

The tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2018 is dismissed, and I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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 27, 2018

Residential Tenancy Branch