



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, MNSD, DRI, OLC, PSF, RP, RR, OPL, OPR, MNR, FF

Introduction

In the first application, by file number, the tenant seeks to cancel a two month Notice to End Tenancy given for landlord use of property and to cancel a ten day Notice to End Tenancy for unpaid rent. He also seeks a variety of relief including the dispute of a rent increase, the provision of services in an unspecified manner, an order that the landlord comply with the law or the tenancy agreement in an unspecified manner, a repair order regarding the washer/dryer, the kitchen and bathroom floors, garbage removal and an inspection for rot and dangerous electrical wiring. He also seeks a rent reduction and a monetary award for damage resulting from the landlord's alleged harassment.

In the second application the landlord seeks an order of possession pursuant to either Notice, a monetary award for unpaid rent and recover of the filing fee.

This matter has been given priority hearing status because the landlord has issued a Notice to End Tenancy (two) and the tenant has challenged it. Rule 2.3 of the Rules of Procedure state that a party is not to bring unrelated claims together. For the same reasons as given by the arbitrator in the earlier, July 11, 2018 hearing (related file numbers shown on cover page of this decision) this hearing will deal with the validity of the two Notices to End Tenancy. The landlord's claim for unpaid rent is directly related to the ten day Notice and so it will be considered. All other claims are hereby dismissed with leave to re-apply.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenant indicated that he had made recordings of various conversations with the landlord and that the landlord had not been informed or consented to those recordings. Further, the landlord denied receiving a USB stick containing those recordings. As well, none of those recordings appear in the file evidence provided for this hearing though the tenant testifies that he submitted a USB stick with the recordings to the Residential Tenancy Branch office in Burnaby.

The parties were informed that I would not accept the evidence of recordings taken without the landlord's knowledge or consent unless the landlord first denied the content of any particular conversation. In any event, as it turned out, the recordings were not reviewed and were not considered in reaching this decision.

Issue(s) to be Decided

Is the ten day Notice a valid Notice claiming unpaid rent truly due as of its date? Does the landlord have a good faith intention that his son will be moving into the rental unit?

Background and Evidence

There are actually two rental units involved in this matter. The landlord and his brother are the owners of a duplex. Each side of the duplex holds a three bedroom rental unit on its upper floor and each holds a one bedroom and a bachelor rental unit below the main floor.

About ten year ago the tenant moved into the three bedroom upper rental unit on one side of the duplex. There was no written tenancy agreement. In about 2015 the tenant began renting the bachelor suite and a garage from the landlord in addition to the three bedroom upper unit. It was found in the earlier arbitration that this arrangement commenced June 1, 2015 and that the rent was \$1715.00 for all, utilities included. It was found that this rent was reduced by agreement to \$1640.00 a month.

In the previous, July 11, 2018 arbitration (decision dated July 15) it was found that the landlord had imposed rent increases not in accord with the law. The tenant's withholding of earlier rent was approved and he was awarded an additional \$8565.00 from the landlord, to be deducted from future rent.

The landlord applied for review of that decision but he says he was refused because he was too late to apply. He says he has retained a lawyer with the intention of applying for judicial review because the tenant's claim was barred by the two year limitation period (found in the *Limitation Act*, S.B.C. 2012, c. 13). A judicial review proceeding has not yet been initiated.

The landlord admits that the ten day Notice in question in this proceeding, claiming unpaid rent totalling \$7025.00, does not take into account the decision and award.

The landlord testifies that it is his intention that his son T. will move into the rental unit. The record shows that in September 2017 the landlord had given the tenant another two month Notice for the same reason. The tenant did not apply to challenged that Notice and did not vacate on its effective date. The landlord applied for an order of possession and the tenant opposed it. The arbitrator in that hearing (file number shown on cover page of this decision) rendered a decision dated May 15, 2018 determining that the landlord did not prove service of the Notice on the tenant. She dismissed the landlord's application, but with leave to re-apply.

The landlord did not re-apply for an order of possession pursuant to that two month Notice. Rather, at the end of July 2018 he issued another two month Notice (neither party appears to have filed a copy of it).

The landlord is the co owner of the other side of the duplex, which has an identical floor plan. That side has been undergoing renovations for some months and the upstairs and perhaps both suites in the lower portion have been vacant.

The tenant says that his relationship with the landlord had been good until last year, when he started complaining about the rent increases the landlord had imposed. His complaints ended up in the dispute application and decision that awarded him thousands of dollars from the landlord. The tenant says that is why the landlord wants to evict him. He says the landlord could move his son into the empty suite next door but has chosen his rental unit instead or he could move his son into one of the other rental units the landlord has at other locations.

In response, the landlord says he cannot move his son into the other side of the duplex because his brother's daughter J is moving in there. He further states that there is aluminum wiring in the home which is no longer allowed. The other side has been remediated and this side will have to be remediated too.

Analysis

Ten Day Notice to End Tenancy

It is apparent that according to the decision rendered July 15, the tenant does not owe the landlord the rent money demanded in the ten day Notice. For that reason the ten day Notice is not a valid Notice and I cancel it.

Two Month Notice to End Tenancy

The tenant argues that he is being evicted for purely financial reasons and that automatically justifies cancelling the Notice. I disagree. There may be many reasons a landlord chooses to move a family member into a rental unit and financial reasons are not excluded. A landlord needing to house himself or a family member is entitled to consider which of his properties is under producing returns on his capital investment. Such a landlord may still have a good faith intention of having himself or a close family member occupy the rental unit.

In this case the tenant has raised significant reasons to suspect that the landlord has given the two month Notice in an effort to rid himself of the tenant and not to house a member of the family. The tenant has obtained a significant award against the landlord resulting in the landlord not receiving any rent for some months in the past and some to come.

The landlord did not elaborate on why his son is to be taking up residence at the property. The son did not give or provide evidence to confirm his plan to move in. I can understand that the landlord's brother likely exercises control over the other side of the duplex and so is moving his daughter in there, but the landlord did not explain why his son would be living in a three bedroom rental unit at the landlord's cost, when there are a one bedroom and bachelor unit available and maybe other rental units at other locations as well.

Of note, the tenant rents two rental units from the landlord; the three bedroom upper and the bachelor below. It is not clear that the Notice is intended to evict the tenant from one or the other or both. Nor is it clear why the tenant must give up possession of both.

In a dispute of this nature, the initial burden of proof of a good faith intention is on the landlord. In all the circumstances, on a balance of probabilities, I find the landlord has

not established a good faith intention to have a close family member occupy either rental unit and I cancel the two month Notice to End Tenancy.

Conclusion

The tenant's application to cancel a ten day Notice to End Tenancy and a two month Notice to End Tenancy are allowed.

The landlord's application for an order of possession and a monetary award for unpaid rent are dismissed.

The tenant is entitled to recover the \$100.00 filing fee for this application and I authorize him to reduce his next rent due by \$100.00 in full satisfaction of the fee.

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: October 01, 2018

Residential Tenancy Branch