



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LAT, MNDCT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), for authorization to change the locks and for monetary compensation.

The Tenant was present for the duration of the teleconference hearing, as was the Landlord and the Landlord’s son (the “Landlord”). The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served on the other party in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

In accordance with Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other. Unrelated claims may be dismissed.

Due to the limited time available for the hearing, and given the urgent nature of a dispute over a notice to end tenancy, the Tenant’s monetary claims were dismissed, with leave to reapply.

The parties were informed that this decision will be address the dispute over the Two Month Notice, as well as the Tenant's request to change the locks. Either party is at liberty to file an Application for Dispute Resolution for any remaining issues regarding this tenancy.

Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Is the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be provided authorization to change the locks to the rental unit?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on July 1, 2013. Monthly rent was initially \$850.00 and through rent increases is currently \$907.00. A security deposit of \$425.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the tenancy details as stated by the parties.

The Landlord testified that a Two Month Notice was sent to the Tenant by registered mail on August 20, 2018. The Two Month Notice, dated August 13, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 effective end of tenancy date of the Two Month Notice is stated as October 31, 2018.

The Landlord testified that one of his sons will be moving into the rental unit. The son present at the hearing confirmed that his brother is moving into the lower level unit, and he will be moving into the upstairs unit once renovations in both units are completed. A

letter from the son moving into the lower level unit, dated September 1, 2018 was submitted into evidence. The letter states his intent to move into the rental unit.

The Tenant confirmed receipt of the Two Month Notice on August 25, 2018 and she applied for Dispute Resolution on August 21, 2018. Her initial Application did not include a dispute of the Two Month Notice, which was added through an amendment submitted on August 28, 2018.

The Tenant provided testimony that a previous Two Month Notice had been served to her for the same reason. Through a Dispute Resolution Proceeding, with a decision received by the Tenant on July 25, 2018, the Two Month Notice was cancelled and the tenancy continued. The previous decision was submitted into evidence by the Tenant.

The Landlord stated that his son still has plans to move in, which is why a second Two Month Notice was issued after the previous one was cancelled. He stated that he has plans to do some renovations in the rental unit and then his son will move in as soon as those are completed.

The Tenant stated that prior to receiving the first Two Month Notice, the Landlord had told her if she doesn't pay an additional \$600.00 per month in rent, she will be evicted. She stated that she then received a text message stating she could pay \$200.00 more per month. When she refused, she was served with a Two Month Notice, which was subsequently cancelled through a previous Dispute Resolution hearing.

The Tenant stated her belief that the Landlord has plans to complete renovations and then rent out the unit for more monthly rent than she is currently paying. However, she also stated that since the previous hearing, the Landlord has not mentioned raising the rent again.

The Landlord provided testimony that he did not try to increase her rent and has only provided two legal rent increases since the beginning of the tenancy. He confirmed his son's plans to move in and stated that he did not provide enough evidence at the last hearing, which is why this time he submitted a letter from his son and had his other son present at the hearing to confirm the plans.

The Landlord stated that the one month of rent compensation has not yet been provided as required when a Two Month Notice is served. However, he stated his intent to not charge the Tenant the last month of rent, should the Two Month Notice be upheld. The

Landlord also confirmed his understanding of the provisions for compensation under the *Act*, should the rental unit not be used for the stated purpose of the Two Month Notice.

The Tenant has also applied for authorization to change the locks. She stated that after returning from a trip, she was unable to enter the rental unit due to the deadbolt being locked. She does not lock the deadbolt as she does not have a working key.

After many failed attempts to contact the Landlord, and waiting outside as she was unable to enter the unit, she had to stay at a friend's home for the evening. Almost 24 hours later, the Landlord came to the unit to unlock the deadbolt.

The Tenant stated that she still does not have a working key. Although she was provided a key to the deadbolt at the beginning of the tenancy, it no longer works, so she stopped locking the deadbolt and only locked the main door lock.

The Tenant stated her concern that the Landlord had entered the property while she was away, as no one else has a key. She also noted that on July 25, 2018, the Landlord sent her a text message to inform her of his intent to enter the rental unit for an inspection. She denied his entry due to not receiving written notice at least 24 hours prior, as required by the legislation. The Tenant submitted the text message exchange regarding the request for an inspection into evidence.

The Landlord stated that he provided a deadbolt key to the Tenant at the beginning of the tenancy, and was not aware that it was no longer working. He testified that he did not enter the rental unit, and instead that someone else must have a key. He stated his concern that the Tenant had a roommate that he was not aware of, which the Tenant denied. The Landlord confirmed that he was willing to provide a working deadbolt key to the Tenant.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

In regard to the Two Month Notice, I refer to *Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property*. This Policy Guideline states that a tenancy may be ended when a landlord intends, in good faith, to use the property for the purpose stated on the notice. Good faith is defined as the following:

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

Based on the testimony of the Landlord, the testimony of the Landlord's son, and the letter from the son who intends to move into the unit, I accept that the Two Month Notice has been issued in good faith.

Despite the Tenant's claims that the Landlord may be seeking to end the tenancy in order to increase the monthly rent, I do not find sufficient evidence before me to prove that this is the situation. Instead, I find that the concept of good faith applies to this matter.

When the Landlord's previous Two Month Notice was cancelled, he served the Tenant with a second notice for the same reason. I find this to be additional evidence towards the Landlord's intentions with the property and that it adds additional weight to the determination that, on a balance of probabilities, the Landlord intends to use the property for the purpose stated on the Two Month Notice.

Section 55 of the *Act* states that an Order of Possession may be given to the Landlord if the notice to end tenancy is upheld and the notice complies with Section 52 of the *Act*. Upon review of the Two Month Notice submitted into evidence, I find it in compliance with Section 52 of the *Act* and therefore grant the Landlord an Order of Possession.

During the hearing, the Landlord stated that he was willing to provide the Tenant until the end of November 2018 to move out of the rental unit. Therefore, I issue an Order of Possession to the Landlord, effective November 30, 2018 at 1:00 pm.

The Landlord is reminded that Section 51(1) of the *Act* applies, and the Tenant is entitled to one month of rent compensation. As stated during the hearing, the parties should also be aware of Section 51(2) of the *Act*. A tenant may seek monetary compensation should it be determined that the stated purpose of the Two Month Notice was not undertaken, within a reasonable time to do so.

As for the Tenant's claim for the deadbolt in the rental unit, I accept the testimony of the Landlord that he is willing to provide a working key to the Tenant. Therefore, I do not find it necessary to authorize the Tenant to change the locks in accordance with Section 31 of the *Act*.

Instead, pursuant to Section 62 of the *Act*, I order the Landlord to provide a deadbolt key to the Tenant to be used for the duration of the remainder of the tenancy. This should be completed within 2 days of receipt of this decision. The Tenant must return all keys to the Landlord at the end of the tenancy in accordance with Section 37(2)(b) of the *Act*.

Conclusion

I grant an Order of Possession to the Landlord effective **no later than November 30, 2018 at 1:00 pm**. 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 Landlord is ordered to provide a working key for the deadbolt of the rental unit for use during the remainder of the tenancy.

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 12, 2018

Residential Tenancy Branch