



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On August 29, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued on August 16, 2018 and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord and her Agent as well as one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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

Issues to be Decided

- Should the Notice issued on August 16, 2018, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

All parties agreed that the Notice was served on August 16, 2018, by personally serving it to the Tenants. The Notice indicated that the Tenants were required to vacate the rental unit on October 31, 2018. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they have a large family that has continued to grow and that they now require the use of the basement for their children as they are too old to continue to share a room.

The Tenant testified that this is the third Notice she has received from the Landlord and that she does not believe that this Notice was issued in good faith. The Tenant testified that the previous Notice's were cancelled by this office as the Landlord had stated in the first hearing that they were only going to use one of the rooms in the basement and re-rent the other. The Tenant provided two previous decision issued by this office into documentary evidence.

The Landlord testified that they have issued the Notice in good faith and that they will be using the full basement for their expanding family. The Landlord also testified that she would be willing to give the Tenants additional time to vacate the rental unit, due to the late date of this hearing. The Landlord offered to extend the move-out date on the Notice to November 30, 2018.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. In this case, I find the Tenants did dispute the Notice within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires 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.

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 they do not have an ulterior motive for ending the tenancy.

I have reviewed all of the documentary evidence before me, and I find there is no evidence to show that the Landlord had issued the Notice with ulterior motives. Therefore, I must accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice issued on August 16, 2018.

Pursuant to section 55 of the Act, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit.

I have reviewed the Notice, and I find the Notice issued on August 16, 2018, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on November 30, 2018.

As the Tenants have not been successful in their application to cancel the notice, I find the Tenants are not entitled to recover the filing fee for this hearing.

Conclusion

I dismiss the Tenants' application to cancel the Notice issued on August 16, 2018.

I grant an Order of Possession to the Landlord effective not later than 1:00 p.m. on November 30, 2018. The Tenants must be served with this Order. Should the Tenants 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: October 17, 2018

Residential Tenancy Branch