



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OLC, PSF, RR

Introduction

The tenant filed an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated August 30, 2018 (“2 Month Notice”), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order directing the landlord to provide services or facilities agreed upon but not provided, and a monetary order of \$700.00 as a rent reduction under the Act.

The tenant, landlord KS (“landlord”) and the spouse of the landlord LS attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained to the parties. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. I have reviewed all 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.

Neither party raised any concerns regarding the service of documentary evidence and did confirm that they were served with documentary evidence and had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that his spouse LS should not be listed as a respondent landlord as she is not on title and that he is the only landlord as a result. As a result, I have amended the tenant’s application to remove LS as a landlord pursuant to section 64(3) of the Act.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to cancel the 2 Month Notice at this proceeding. I will determine later in this decision what portions of the tenant’s application will be dismissed with leave to reapply which will be dependent on whether the tenancy is ending or continuing.

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2015. The landlord testified that he purchased the home effective July 1, 2017. The tenancy agreement was formed with the previous landlord and survives the sale of the rental property under the *Act*.

The tenant confirmed that they were served on August 30, 2018 with the 2 Month Notice dated August 30, 2018. The effective vacancy date on the 2 Month Notice is listed as October 31, 2018. The tenant disputed the 2 Month Notice on September 5, 2018 which was within the allowable time limitation under section 49 of the *Act* of 15 days. Page two of the 2 Month Notice indicates the reason as:

“The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; of the parent or child of that individual’s spouse).”

There is no dispute that the landlord lives in one portion of the home and the tenant resides in a separate portion of the home with a separate entrance. There was no evidence presented that the parties share a kitchen or bathroom.

The landlord testified that his spouse is pregnant with their second child and that his spouse is expecting in January 2019. The landlord also testified that their 17 month old child has created noise in the rental unit to which the tenant has complained on multiple occasions and that in October 2018 alone, the landlord has received 15 emails from the tenant. The landlord stated that the reason the tenant was served the 2 Month Notice is that the landlord's family needs the extra room as their family operates two home based businesses, they have another child coming with a due date of January 2019 and that the landlord has decided not to be a landlord at this time as a result.

The tenant claims that the 2 Month Notice was served in retaliation of an email she sent to the landlord dated August 13, 2018 ("email") which was reviewed during the hearing. In the email the tenant raises several concerns to the landlord and the tenant writes in part:

"...I am hoping to vacate your suite sometime between January and April 2019..."

[Reproduced as written]

The parties disputed their respective attempts to sit down and talk together about the issues raised in the email dated August 13, 2018. The landlord stated that the tenant has given no formal notice to vacate the rental unit and can't rely on an email giving a time frame under the *Act* and that their reason is valid as stated in the 2 Month Notice.

The tenant proposes a move-out date of January 31, 2019 during the hearing and the landlord was not interested in extending the effective vacancy date listed on the 2 Month Notice.

The tenant testified that moving out by October 31, 2019 will be very inconvenient for her schooling and work.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice. The reason indicated on the 2 Month Notice is "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; of the parent or child of that individual's spouse)." Although the tenant alleges that she feels the 2 Month Notice was retaliatory in nature, I find the supporting

evidence from the landlord supports that the landlord's family is expecting another child as of January 2019 and that the landlord has made the decision not to be a landlord at this time and requires the space of the entire home due to the needs of the landlord's immediate family.

I am unable to consider the tenant's alleged hardship due to school and/or work-related issues as there is no section of the *Act* that cancels a 2 Month Notice due to "hardship".

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid.

Therefore, **I dismiss** the tenant's application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice issued by the landlord with an effective vacancy date of October 31, 2018. The landlord has the right to choose not to be a landlord and end a tenancy for landlord's use of the property. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Given the above and taking into account that I find the 2 Month Notice complies with section 52 of the *Act*, **I grant** the landlord an order of possession effective **October 31, 2018 at 1:00 p.m.** I find the tenant has provided insufficient evidence to show that the 2 Month Notice was not served in good faith.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply. I uphold the 2 Month Notice issued by the landlord.

The landlord has been granted an order of possession effective October 31, 2018 at 1:00 p.m. I find the tenancy ends on that date and time.

The order of possession must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 19, 2018

Residential Tenancy Branch