



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, LRE, LAT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was personally served the notice of dispute resolution package on July 29, 2018. The landlord confirmed receipt of the dispute resolution package on July 29, 2018. I find that the landlord was served with this package on July 29, 2018, in accordance with section 89 of the *Act*.

On July 27, 2018 the tenants applied to amend their application for dispute resolution to cancel a Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice"), correct the name of the landlord, and add a monetary claim. The tenants testified that the amendment application was served on the landlord with the dispute resolution package on July 29, 2018. The landlord confirmed receipt of the tenants' amendment application on July 29, 2018 with the original dispute resolution application.

I find that the amendment package was served on the landlord on July 29, 2018 in accordance with section 88 of the *Act*.

At the beginning of the hearing the landlord provided his full legal name. The original application for dispute resolution included an unnecessary pre-fix. Pursuant to section 64 of the *Act*, I amended the dispute resolution application to state the correct name of the landlord.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the Two Month Notice, pursuant to section 49 of the *Act*?
2. If the tenants' application to cancel the Two Month Notice is dismissed and the landlord's Two Month Notice is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This fixed term tenancy began on March 1, 2018 and is set to end on March 1, 2019. The tenants are currently residing in the subject rental property. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 24, 2018 he served the tenants with the Two Month Notice with an effective date of September 30, 2018 by leaving a copy in the tenants' mailbox. The tenants testified that they did not receive the Two Month Notice until August 15, 2018. When it was brought to the tenants' attention that they filed to dispute the Two Month Notice on July 27, 2018, they changed their testimony and stated that they must have received the Two Month Notice around July 24, 2018.

The Two Month Notice stated the following 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 landlord testified that his son is going to move into the subject rental property. The landlord testified that they want their son to live independently and to learn to cook and clean for himself.

The tenants stated that they do not believe that the landlord's son will move into the property. The tenants stated that they believed they were issued the Two Month Notice because they had a hydro dispute with the landlord.

Analysis

Based on the testimony of both parties, I find that the Two Month Notice was served on the tenants on July 27, 2018, three days after it being left in the mailbox, pursuant to sections 88 and 90 of the *Act*.

Section 49(3) of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. However, section 49(2)(a)(iii) states that if the tenancy agreement is a fixed term tenancy agreement, the landlord cannot end the tenancy earlier than the date specified as the end of the tenancy.

In this case, both parties agreed that this was a fixed term tenancy agreement set to end on March 1, 2019; therefore, the landlord cannot end this tenancy, pursuant to section 49(2)(a)(iii) of the *Act*, until a date that is on or after March 1, 2019.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 49(2)(iii) is March 1, 2019. I find that the corrected effective date of the Two Month Notice is March 1, 2019.

Policy Guideline 2 states that 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. If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

Based on the submissions of both parties, I find that the landlord is acting in good faith and intends to have his son occupy the subject rental property. I dismiss the tenants' application to cancel the Two Month Notice.

Section 55 of the *Act* states that 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:

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

- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Two Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenants' application and upheld the landlord's Two Month Notice, I find that the landlord is entitled to an Order of Possession, effective March 1, 2019, pursuant to sections 49 and 55 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on March 1, 2019**, which should be served on the tenants. 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: September 24, 2018

Residential Tenancy Branch