



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP

Introduction

This hearing dealt with application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to section 49;
- An order for the landlord to comply with the Act, regulation, and/or the tenancy agreement pursuant to section 62; and
- An order for the landlord to make repairs to the unit pursuant to section 32.

The tenant attended with her advocate KG ("the tenant"). The landlord attended with her grandson and agent JG ("the landlord").

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the landlord was served pursuant to section 89 of the *Act*. The tenant acknowledged receipt of the landlord's materials.

At the outset, the parties agreed the landlord's name be corrected to reflect accurate spelling.

Both parties were given a full opportunity to submit affirmed evidence, to cross-examine the other party, and to present documentary evidence.

Section 55 of the *Act* requires that when a tenant applies 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*.

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the “*Rules*”) states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant’s application to cancel the Two Month Notice and are therefore dismissed with leave to reapply:

- An order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement pursuant to section 62; and
- An order for the landlord to make repairs to the unit pursuant to section 32.

Issue(s) to be Decided

- Is the tenant entitled to cancellation of a Two Month Notice pursuant to section 49;
- If the tenant’s claim is dismissed, 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 tenant's claims and my findings are set out below.

The parties testified that this tenancy began approximately three years ago. Rent is \$585.00 payable on the first of the month. A security deposit of \$250.00 was paid at the beginning of the tenancy which is held by the landlord

The tenant acknowledged receipt of the Two Month Notice dated July 1, 2018 and personally served on her that day with an effective date of August 31, 2018, corrected to September 30, 2018.

A copy of the Two Month Notice was submitted in evidence. It states the following with respect to the reasons for issuance,

"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 the unit is in the basement of a 3-bedroom house that she owns and that she intends to occupy the unit.

The landlord stated her extended family lives with her. This extended family includes the landlord's representative and grandson JG, the landlord's son, her daughter-in-law and her two pre-teen grandchildren.

The landlord testified the two grandchildren are getting older and require their own bedrooms. The landlord wants the unit occupied by the tenant to more comfortably accommodate her family.

The landlord's representative JG provided testimony confirming the landlord's intentions. He is a 23-year-old university student and has been working and living elsewhere for the summer. He has returned to the landlord's house. He testified the landlord wants the unit occupied by the tenant to better accommodate her family.

On the other hand, the tenant stated the landlord intends to rent the unit at a higher rent when the tenant leaves.

The tenant's evidence included a written statement from her friend, GS. The letter stated that GS overheard a conversation between the landlord and another person in Punjabi, a language understood by GS. In this conversation, GS stated the landlord said she wanted to get the tenant out so she could charge more for the unit.

The landlord's advocate, KG, testified the tenant has a disability and it will be challenging for her to find another place to live. KG testified that she has experience in helping people such as the tenant find accommodations and that, in her opinion, the landlord could possibly rent the unit for \$700.00 a month, \$115.00 more a month than the rent currently paid by the tenant.

The landlord vehemently denied any such conversation as reported by GS ever occurred and claimed GS' statement was a fabrication to help the tenant with her application to remain in the unit.

The landlord strongly denied any intention to re-rent the unit or to obtain greater rental income from the unit. She pointed to the marginal possible rent increase which would not be a compelling motivation for her.

Analysis

I find, as both parties agree, that the Two Month Notice was served on the tenant on July 1, 2018, pursuant to section 88 of the *Act*, with a corrected effective date of September 30, 2018.

Section 52 of the *Act* states that for a Two Month Notice to be effective, it must: be in writing, be in the approved form, and state the grounds for ending the tenancy. I find the Two Month Notice complies with section 52 of the *Act*.

Section 49 provides that the tenant may dispute a Two Month Notice by making an application within fifteen days of the receipt of the Notice. The tenant applied for dispute resolution on July 4, 2018, within the 15-day period.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the Two Month Notice.

The landlord must now show on a balance of probabilities, that is, it is more likely than not, that the tenancy should be ended for the reasons identified in the Two Month Notice. In the matter at hand, the landlord must demonstrate that the landlord intends in good faith to occupy the rental unit.

Residential Tenancy 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 she truly intended to do what she said on the Two Month Notice. The landlord must also establish that she does not have another purpose or an ulterior motive for ending the tenancy.

I understand the tenant's frustration and anxiety around having to leave the rental unit and find replacement accommodations.

I have considered all the evidence and testimony with respect to the tenant's claims that the landlord has not issued the Two Month Notice in good faith. I have considered the landlord's affirmed oral testimony supported by her representative JG that she intends to occupy the unit. I have also considered the written statement of the tenant's friend GS in which GS claimed to overhear the landlord saying she wanted the unit so she could make more money.

However, a suspicion on the tenant's part that the landlord intends to rent the premises to new tenants at a higher rent is not evidence the landlord does not have good faith.

I accept the landlord's testimony on a balance of probabilities that she intends in good faith to occupy the unit and does not intend to defraud the tenant, act dishonestly or avoid obligations to the tenant or under the *Act*. I accept her evidence, supported by her grandson and representative JG, that the tenant's unit is needed to accommodate the landlord's family.

I find the landlord has established cause for ending the tenancy. I therefore dismiss the tenant's claim to cancel the Two Month Notice.

I now consider whether the landlord is entitled to an order of possession pursuant to section 55.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlords' notice to end tenancy complies with section 52 and the tenants' application is dismissed.

As I found, the Two Month Notice complies with section 52 above, and I have dismissed the tenant's application, I therefore grant the landlord an order of possession, effective on September 30, 2018.

Conclusion

I grant the landlord an order of possession, effective 1:00 PM on September 30, 2018. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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 19, 2018

Residential Tenancy Branch