



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

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 pursuant to section 49; and
- Reimbursement of the filing fee pursuant to section 72.

The tenant attended. The landlords, who are spouses, attended with their legal counsel RG ("the landlords"). The landlords acknowledged receiving the tenant's Notice of Hearing and evidentiary materials sent by registered mail. The tenant acknowledged receipt of the landlords' materials within the allowable time under the Rules of Procedure. No issues of service were raised. I find the landlords were served in accordance with sections 89 and 90.

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

The correct spelling of both landlords' names was provided and documents amended accordingly.

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*.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to section 49; and
- Reimbursement of the filing fee pursuant to section 72.

If the tenant's claims are dismissed, are the landlords 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 landlords testified the tenancy began on April 1, 2014 and is currently a month-to-month tenancy. Rent is \$707.00 payable on the first of the month. The tenant paid a security deposit of \$340.00 at the beginning of the tenancy which is held by the landlords.

The Two Month Notice was dated June 25, 2018 and posted on the tenant's door on June 26, 2018. The effective date is August 31, 2018. The landlord filed a Proof of Service form.

The tenant acknowledged receipt of the Two Month Notice. 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 DE testified that he and his wife currently live in a community located within a 30-minute drive from a hospital. The landlord stated he was diagnosed with an illness in February 2018 which requires "constant monitoring and attendance", and may require immediate attendance at a medical facility. The landlords intend to live in the rental unit which is located 6-7-minute drive away from a hospital.

The landlord DE filed an affidavit in support of his testimony. The affidavit states his physician [name], "is of the opinion that it would be more appropriate for me to live closer to [community in which the rental unit is located]."

A signed letter dated June 18, 2018 from the landlord's physician was submitted in evidence stating in part, "Due to health problems it is recommended that this person move to [community]".

The landlord FE also filed an affidavit attesting to her husband's medical condition, the recommendation from his physician that they move to the rental unit, and the intention of the landlords to reside in the unit.

The landlord FE testified the tenant's unit is on the ground floor which is necessary for her medical condition as she cannot easily climb stairs. She submitted a physician's letter dated January 07/07 [corrected to be 07/17] stating she had "bilateral total knee replacements".

Both landlords also stated that their place of worship with an affiliated community is closer to the rental unit than where they presently live. They testified they intend to be more active participants in the organization and this is another compelling reason to move to the unit.

In their affidavits, the landlords acknowledge tenancy difficulties with the tenant in the past. However, they deny that retaliation forms any part of their decision to move to the unit.

The tenant opposed the landlords' application in her testimony and in substantial written evidence. She testified that the landlords' Two Month Notice was unfair and unreasonable; she should not be required to leave her home, and the Two Month Notice should be cancelled.

The tenant stated she has no where else to live. She questioned why she was not offered an alternative unit in the building. The tenant expressed the opinion the landlords were unfairly targeting her for eviction. The tenant referred to her past activities as a caretaker and her recent replacement for reasons she did not comprehend. The tenant testified she effectively opposed a rent increase in the past and the landlords were retaliating. She expressed the opinion the landlords were

ungrateful and vindictive; she believed they were discriminating against her with unknown motives.

For these reasons, the tenant believed the landlords were not acting in good faith in issuing the Two Month Notice.

Analysis

I find, as both parties agree, that the Two Month Notice was posted to the tenant's door on June 26, 2018. Pursuant to section 90, the Two Month Notice is deemed received by the tenant three days after posting, on June 29, 2018. I find the tenant was served with the Two Month Notice on June 29, 2018 as required by section 88 of the *Act*.

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 9, 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 landlords 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 landlords must demonstrate that the landlord, or a close family member, 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 landlords to establish that they truly intended to do what they said in the Two Month Notice. The landlords must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I have considered all the evidence and testimony with respect to the tenant's claims that the landlords have not issued the Two Month Notice in good faith. I have also considered the testimony of both landlords and the supporting medical affidavits.

The landlords have submitted evidence which I accept, showing they have a necessity to move back into the rental unit due to their medical and physical requirements. The landlords were forthright in admitting there were past issues with the tenant; however, this evidence does not lead me to conclude they issued the notice in bad faith. The evidence presented did not persuade me that they have any other intention except to move back into the subject rental unit. Therefore, I find the landlords have met the burden of proving that the landlords intend to occupy the unit. I find the landlords have established good faith in the issuance of the Two Month Notice.

While I understand the tenant's frustration and anxiety around having to leave the rental unit, I find the landlords have established grounds for ending the tenancy and dismiss the tenant's claim to cancel the Two Month Notice.

I now consider whether the landlords are entitled to an order of possession pursuant to section 55.

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

As I found above, the Two Month Notice complies with section 52, and I have dismissed the tenant's application. I therefore grant the landlords an order of possession effective two days after service upon the tenant.

As the tenant's application is dismissed, I do not award her reimbursement of the filing fee.

Conclusion

I find the landlords' Two Month Notice was issued in good faith, and they have met the grounds under section 49 to end the tenancy. Therefore, I dismiss the tenant's application and pursuant to section 55 of the Act I grant the landlords an order of possession which is effective two days after service on the tenant. This order must be

served on the tenant. If the tenant fails to comply with this order, the landlords 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 12, 2018

Residential Tenancy Branch