



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 30, 2018 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord and his agent 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 landlord's agent confirmed that she had permission to speak on the landlord's behalf at this hearing.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant was personally served with the landlord's 2 Month Notice on June 30, 2018. The notice indicates an effective move-out date of August 30, 2018. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 2 Month Notice on June 30, 2018. In his application, the tenant indicated that he personally received the 2 Month Notice on June 30, 2018 and he disputed it in this application.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 2 Month Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the testimony of the landlord's agent, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This month-to-month tenancy began sometime in mid-2016. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit. The rental unit is the basement of the same house where the landlord lives upstairs on the main floor.

A copy of the 2 Month Notice was provided for this hearing. The landlord identified the following reason for seeking an end to this tenancy on page 2 of the notice:

- *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's agent claimed that the landlord issued the 2 Month Notice to the tenant because the landlord's son intends to move into the rental unit. She said that the landlord's son is 24 years old, wants his own space and privacy, and is currently living with the landlord on the main floor of the house. She claimed that he is planning to live in the rental unit long-term and he has a local job.

The landlord's agent confirmed that the landlord issued the notice in good faith, there have been no issues with the tenant, the landlord did not issue any other notices to end tenancy to the tenant, and there have been no previous RTB hearings between the parties. The landlord's agent testified that the rent has remained the same throughout the entire tenancy and that the landlord has not tried to raise the rent, contrary to what the tenant claimed in his application.

Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after he receives the notice. The tenant received the 2 Month Notice on June 30, 2018 and filed his application to dispute it on July 16, 2018. Therefore, the tenant is within the fifteen day time limit under the *Act* because he filed his application on the next business day when the RTB offices were open, since July 15, 2018 fell on a Sunday when the RTB offices were closed.

Section 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

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

I accept the landlord's agent's testimony that the landlord's son intends to move into the rental unit. I accept that the landlord's son wants privacy now that he is 24 years old and that he no longer wants to live with the landlord on the main floor of the house.

I find that the landlord issued the notice in good faith. There have been no other notices to end tenancy issued to the tenant or previous RTB hearings, showing that the landlord may have issued the notice in bad faith. The rent has not been raised since the tenancy began in mid-2016.

Based on a balance of probabilities and for the above reasons, I find that the landlord's son intends to move in to the rental unit in good faith to occupy it. I find that the landlord has met the onus of proof under section 49 of the *Act*.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. The landlord confirmed that the tenant has not paid rent for September 2018 and the effective date of the notice has already passed. I find that the landlord's 2 Month Notice, dated June 30, 2018, complies with section 52 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises 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 07, 2018

Residential Tenancy Branch