



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On September 28, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with F.M. attending on her behalf, as well. The Landlords also attended the hearing. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlords the Notice of Hearing package by hand, with F.M. as a witness, on September 29, 2018, and the Landlords confirmed that they received this package. As per Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were served with the Tenant's Notice of Hearing package.

She also advised that she served the Landlords her evidence by hand on October 31, 2018 with F.M. as her witness. The Landlords also confirmed receipt of this package. Rule 3.14 of the Rules of Procedure requires that the Applicant's evidence be received by the Respondents and the Residential Tenancy Branch no less than 14 days before the hearing. As this evidence was served in accordance with Rule 3.14, I am satisfied that the Landlords were sufficiently served with the Tenant's evidence.

The Landlords advised that their daughter served the Tenant their evidence by hand on November 8, 2018. The Tenant acknowledged that she was served this evidence on this date, but she stated that it was actually served by the daughter's boyfriend. However, the Tenant confirmed that she had reviewed the Landlords' evidence and was prepared to respond to it. Rule 3.15 of the Rules of Procedure requires that the Respondents' evidence be received by the Applicant and the Residential Tenancy Branch no less than 7 days before the hearing. While the service date of the Landlords'

evidence did not comply with the requirements of Rule 3.15, as the Tenant was prepared to respond, I am satisfied that it would be appropriate to accept and consider the Landlords' evidence when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on August 1, 2015 as a month-to-month tenancy. Current rent was established at \$1,275.00 per month, due on the first day of each month. A security deposit of \$600.00 was paid.

The Landlords submitted that the Tenant was served the Notice by placing it in the mailbox on September 24, 2018. The reason the Landlords served the Notice is because "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 Tenant advised that she received the Notice on September 24, 2018 and subsequently

made her Application to cancel the Notice. The effective end date of the Notice was noted as December 1, 2018.

The Landlords submitted that their daughter would be occupying the rental unit immediately after the Tenant gives up vacant possession and would subsequently commence prior arranged plans to renovate to the property. The upstairs and basement are two, separate rental units and the intent of the renovations is to convert the property back to a single-family dwelling.

The Landlords referenced the building permit, that was submitted into evidence, to support this position and they noted that as part of the project, the kitchen in the rental unit would be removed. They stated that the renovations would take approximately three to four months, and that the intention is to have the daughter and her boyfriend move into the property immediately after completion of the renovations.

Moreover, the reason their daughter is moving into the property is because the condominium they own is currently too small for their needs and the intention is that she will eventually become the owner of the rental unit. The Landlords submitted design drawings, documentation with respect to funding of the renovations, and many emails, some of which dated back to March 2018, to corroborate their intention to renovate the property. However, there is minimal indication in their documentary evidence of the daughter's intention specifically to occupy the premises.

The Tenant submitted that the Landlords chose the wrong reason on the Notice as the tenancy cannot now be ended for the purpose of renovations. It is her belief that the Landlords should have served a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use instead. She drew my attention to the submitted design drawings and speculated that the planned renovations to her rental unit can be simply be reversed at a later date and converted back to a separate rental suite.

She also specifically pointed out that it is peculiar that there are two, different laundry rooms on the separate floors in the design drawings. The Tenant stated that the Notice was issued on the same date as the loan was approved and she advised that she contacted the city, who informed her that construction could commence by October 27, 2018 if necessary. Finally, she cited a specific email which she believed was an attempt by the realtor to clarify the intention of the issuance of the Notice as being related to the occupation of the rental unit by the Landlords or a close family member.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Furthermore, I find it important to note that Policy Guideline # 2 outlines the good faith requirement when ending a tenancy:

"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."

As well, Section 49(2) of the *Act* outlines that the effective date of the Notice must be:

- not earlier than 2 months after the date the tenant receives the notice,
- the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I understand the Tenant's concerns with respect to her doubts that the Landlords' daughter will occupy the rental unit, and the Landlords' evidence is mostly focussed on upcoming renovations to the property instead of being relevant to the reason on the Notice. As well, the Landlords failed to explain to my satisfaction as to why there are multiple laundry rooms in the property if it is being designed as a single-family dwelling.

Other than the Landlords' testimony, there was scant evidence supporting the daughter's intention to move into the rental unit, and the focus of their evidence was on the impending renovations. However, the reason for the Notice was for the daughter to occupy the rental unit.

Black's Law defines "occupancy" as "The act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy, esp. of a dwelling or land."

The Landlords submitted that their daughter would be moving into the property after renovations were complete. In this particular case, I find that reducing a two-unit rental property to a single-family dwelling supports the notion that the entire rental unit will be occupied rather than rented out again. Furthermore, I find it reasonable that it is necessary for the Landlords and/or their daughter to take occupancy of the property to complete the outlined renovations so that the Landlords' daughter could move into the property once complete. As such, I am satisfied that the Landlords have established that the rental unit will be occupied by the daughter, after the effective date of the Notice, for the purpose of completing renovations that will then allow her to move in and occupy afterwards. Thus, I do not find that there is an ulterior motive for ending the tenancy.

In reviewing the totality of the evidence before me, based on a balance of probabilities, I am satisfied that the Landlords provided sufficient evidence at this hearing and have met the onus of proof to substantiate that it is their intention that their daughter, as defined in Section 49 of the *Act*, will occupy the rental unit in good faith. As such, I dismiss the Tenant's Application and I uphold the Notice.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

Section 55(1) of the *Act* states that if a Tenant applies to dispute a Landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the Landlord's notice is upheld, the Landlord must be granted an Order of Possession if the Notice complies with all the requirements of Section 52 of the *Act*.

When reviewing the totality of the evidence, I find that the Two Month Notice to End Tenancy for Landlord's Use of Property received by the Tenant on September 24, 2018 complies with the requirements set out in Section 52. As a result, I find that the Landlords are entitled to an Order of Possession.

During the hearing, the effective end date of the Notice was discussed. As the Notice was received on September 24, 2018 and the effective end date of the Notice was noted as December 1, 2018, I am satisfied that this end date complies with Section 49(2) of the *Act* as the Landlords have exceeded the requirements of the *Act* by providing the Tenant with additional time to vacate the rental unit. Therefore, the Order of Possession is effective at **1:00 PM on December 1, 2018** after service of this Order on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

As a note, both parties were reminded of the compensation requirements under the *Act* if the Landlords do not follow through with the reason the Notice was served. In addition, pursuant to Section 51 of the *Act*, the Tenant is owed compensation in the amount of one month's rent after being served this valid Notice. As the Tenant had paid November 2018 rent, the Tenant must be compensated for November 2018 rent on or before the effective date of the Notice.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlords effective at **1:00 PM on December 1, 2018** after service of this Order on the Tenant. Should the Tenant 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: November 27, 2018

Residential Tenancy Branch