



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) and/or tenancy agreement.

The Tenant and one of the Landlords were present for the duration of the teleconference hearing. The Landlord stated that he did not receive the Notice of Dispute Resolution Proceeding documents from the Tenant. However, as he received a copy of the Tenant’s evidence, he contacted the Residential Tenancy Branch and obtained information on the hearing. The Tenant stated that he received the Landlord’s evidence package and confirmed that he had been unable to serve the Notice of Dispute Resolution package due to being away at the time it was provided.

Although the Landlord did not receive the Notice of Dispute Resolution documents from the Tenant in accordance with the *Residential Tenancy Branch Rules of Procedure*, the Landlord stated that he was willing to continue with the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

At the outset of the hearing, it was confirmed that there are two notices to end tenancy in dispute. The Tenant was served with a Two Month Notice on October 26, 2018, although the reason for ending the tenancy was not checked off on the notice. After realizing the error, the Landlord served the Tenant with a new Two Month Notice on November 21, 2018.

The Tenant did not receive the second Two Month Notice in time to file an amendment to his original Application for Dispute Resolution and as such, he filed a new application to dispute the notice to end tenancy. A hearing was scheduled for January 17, 2019. Through the Tenant's second Application for Dispute Resolution he also requested the recovery of the filing fee paid for that application.

The parties were provided with the opportunity to consider whether they would like both applications heard at the same time regarding the dispute over the two notices to end tenancy. After some discussion, both parties were in agreement with proceeding at the current hearing, so as to have a resolution prior to January 2019.

The Tenant asked to have his evidence from both applications considered in the decision. Despite not yet being served with the evidence from the January 2019 hearing, the Landlord agreed that the Tenant's evidence from both files could be included. During the hearing, the Tenant confirmed that he would still serve a copy of the evidence from the January 2019 hearing to the Landlord, so that both parties are aware of the evidence that was accepted and considered as part of this decision.

As such, pursuant to Section 73 of the *Act*, the Tenant's two Applications for Dispute Resolution were joined to be heard together. This decision will resolve the claims of both applications.

Issues to be Decided

Should either of the Two Month Notices to End Tenancy for Landlord's Use of Property be cancelled?

If either of the Two Month Notices to End Tenancy for Landlord's Use of Property are upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation* and/or tenancy agreement?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began approximately nine years ago. Rent in the amount of \$850.00 is due on the 23rd day of each month. No security deposit was requested by the Landlord at the time the tenancy began.

On October 26, 2018, the Landlord served the Tenant in person with a Two Month Notice to end the tenancy. As stated above, a reason was not provided on this notice, so the Landlord served the Tenant with a second Two Month Notice on November 21, 2018. The Two Month Notice was submitted into evidence and states the following as the 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 effective end of tenancy date of the Two Month Notice is stated as January 23, 2019, although the Landlord acknowledged that the Tenant may need until January 31, 2019 due to most tenancies beginning on the first of each month. The Landlord noted that in such an event, the Tenant would pay one additional week of rent to cover the rental period from January 23, 2019 to January 31, 2019.

The Landlord stated that he has three children, and that they currently provide care for a youth for which they have guardianship. The Landlord submitted into evidence an outline of the events that led to the issuance of the Two Month Notice. He also provided a copy of the temporary guardianship paperwork showing guardianship of the youth from October 2018 until June 2019.

The Landlord stated that their home is no longer big enough to accommodate their needs, which is why they discussed taking over the rental unit for their own use. The Landlord and his family do not intend to reside in the rental unit, but to use the space as

a place for the Landlord's spouse to work on her art, as well as a place to have family stay when visiting. The Landlord stated their intent to use the rental unit as an extension of their home.

The Landlord testified that they began discussing their need for more space more than a year ago, which included a discussion around selling and moving. The Landlord submitted into evidence an email exchange with a realtor that took place in April 2018. However, he stated that they decided not to sell and instead to use the rental unit for additional space.

The Landlord provided testimony that around the time they were considering serving the Tenant with the Two Month Notice, there was a septic backup in the rental unit. The Landlord filed an insurance claim and stated that a restoration company and a plumber were at the rental unit dealing with the issue within a few days.

The Landlord stated that the repairs were more extensive than he first thought and as the repairs were ongoing, they did not charge the Tenant rent for a period of time, and then charged him a lower rent amount as the repairs were almost complete. At one point, they advised that the Tenant move out for a short time due to not being able to use the lower level of the rental unit, but the Tenant decided to stay through the repairs.

The Landlord stated that he received an email from the Tenant dated October 26, 2018 in which the Tenant requested additional repairs to the rental unit. He stated that he had already decided to serve the Two Month Notice at this time, so when they served it they provided the option for the Tenant to vacate the rental unit right away due to the ongoing repairs being completed, or to move out by the date of the Two Month Notice. He stated that the septic backup issue was separate from the decision regarding the Two Month Notice, despite the timing being similar.

The Tenant confirmed that he received the second Two Month Notice on November 21, 2018. He submitted into evidence written statements on both files that questioned the good faith intentions of the Landlord in issuing the notice.

The Tenant also provided a copy of a note from the Landlord that was provided with the Two Month Notice. The note gave two options to the Tenant, to frustrate the tenancy agreement, not pay rent and vacate by November 30, 2018; or to move out on the date of the Two Month Notice.

The Tenant testified as to his belief that the Landlord would not be residing in the rental unit and that a Four Month Notice should have been provided due to converting the rental unit for a new purpose than what it is currently being used for.

The Tenant submitted into evidence a written statement regarding the definition of “occupy” as well as an explanation as to why a Four Month Notice may have been required due to conversion of the unit for family space.

The Tenant also submitted into evidence the email to the Landlord dated October 26, 2018, in which he suggested further repairs that may be useful in the rental unit. He stated that he had not requested these repairs but suggested long term work that could be completed in the rental unit. The Tenant submitted that the Landlord cannot evict him due to the suggestion of repairs. He stated that he received the Two Month Notice on the same day as his email regarding repairs.

As well as disputing the Two Month Notice, the Tenant also applied for an Order for the Landlord to comply with the *Act, Regulation* or tenancy agreement in relation to the water issue in the basement of the rental unit.

The Landlord testified that the septic system became clogged and backed up, causing water to flood into the basement of the rental unit. He stated that the repairs began as soon as possible. Although there is currently no carpet in the basement while the remainder of the repairs are completed, the Landlord stated that the rental unit is now liveable. The Tenant was given permission to pay \$500.00 due to the concrete floor in the basement, along with a period of time in which the Landlord charged no rent while the more major repairs were being completed and the basement was unusable.

The Tenant stated that it was not a septic issue, but a pipe in the rental unit that caused water to leak into the basement. He testified that the moisture has caused some mould to get into the walls and that there are currently loud machines being used to dry the basement.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

Regarding the Two Month Notice dated October 26, 2018, I refer to Section 52(d) of the *Act* which states that in order to be effective, a notice given by a landlord must include the reason for ending the tenancy. As the Two Month Notice did not include a reason, it does not comply with Section 52 and is therefore ineffective.

As for the Two Month Notice dated November 21, 2018, I find that it complies with Section 52 of the *Act*. I also refer to Section 49(8)(a) of the *Act*, which states that a tenant has 15 days in which to dispute a Two Month Notice.

As the Tenant received the Two Month Notice on November 21, 2018 and applied to dispute the notice on November 30, 2018, I find that he applied within the time allowable under the *Act*. As such, the issue becomes whether the reason for the Two Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

I also refer to *Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property* which states the following:

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.

This policy guideline further defines “good faith” as a legal concept that requires a party to act honestly in doing what they say they will. I accept the testimony of the Landlord that he intends to occupy the space for use by himself and his family and does not have plans to re-rent the unit.

As the Tenant questioned the use of the word “occupy”, I find it relevant to include a definition. *Black's Law Dictionary* defines “occupy” as the following: ‘To hold in possession; to hold or keep for use.’ As such, I do not find that the Landlord must reside in the rental unit to occupy that space. Instead I find that the Landlord's stated plans of using the rental unit as an extension of their home fits the definition of occupy.

The Tenant also questioned whether a four month notice to end the tenancy should have been provided in relation to the Landlord's conversion of the rental unit for a different purpose. However, based on the testimony and evidence of the Landlord as to his intended purpose for the rental unit, I do not find that Section 49(6) of the *Act* applies and instead find that the notice was correctly issued under Section 49(3) of the *Act*.

Although the water issues in the rental unit and the service of the Two Month Notice occurred within a similar timeframe, I do not find sufficient evidence before me to establish that the Landlord served a notice to end tenancy due to repairs being required in the rental unit. I accept the testimony of the Landlord that he responded to the water issue quickly and that the resulting damage is almost resolved.

Instead, as I find sufficient evidence before me that the Landlord and the Landlord's family intend to occupy the rental unit, I am satisfied that the Landlord issued the Two Month Notice in good faith. Therefore, I dismiss the Tenant's application to cancel the Two Month Notice.

I also note that as stated in Section 51 of the *Act*, if the Tenant has reason to believe that the Landlord has not taken steps to use the rental unit for the stated purpose within a reasonable time, the Tenant may find cause to seek compensation under this section of the *Act*.

As for the Tenant's application for an Order for the Landlord to comply, I find that there are no orders necessary. It seems that there was a septic or pipe issue in the home that could not have been predicted, and that when notified the Landlord took reasonable steps to deal with the repairs as required under Sections 32 and 33 of the *Act*.

Although it seems that the repairs needed were more extensive than first thought, I find that the Landlord has provided compensation to the Tenant for the disruption by reducing the rent for a period of time. As I do not find sufficient evidence to establish that the Landlord is in breach of the *Act*, I decline to make any orders for the Landlord to comply.

The Tenant applied for the return of the filing fee on the second Application for Dispute Resolution. However, as the Tenant was not successful with either application, I decline to award the recovery of this fee.

As the Tenant's application to cancel the Two Month Notice was not successful,

and the Landlord established, on a balance of probabilities, that he was acting in good faith by serving the notice, I find that the Two Month Notice dated November 21, 2018 is upheld. Therefore, the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the *Act*.

I accept the testimony of the Landlord that he is willing to provide the option for the Tenant to move out at the end of January 2019 instead of partway through the month. I issue an Order of Possession to the Landlord effective January 31, 2019 at 1:00 pm.

I also remind the parties that pursuant to Section 51 of the *Act*, the Tenant is entitled to compensation equivalent to one month of rent.

Conclusion

The Two Month Notice dated October 26, 2018 is cancelled and of no force or effect. The Two Month Notice dated November 21, 2018 is upheld. The remainder of the claims on both of the Tenant's applications are dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **on January 31, 2019 at 1:00 pm**. 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: December 07, 2018

Residential Tenancy Branch