



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on December 17, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. Although the Landlord served her evidence 3 days late, the package was not very large, and the Tenant had a chance to read and understand the information prior to the hearing. Since the Tenant was able to sufficiently speak to specifics in the Landlords evidence package, I will accept and admit this evidence into the hearing, even though it was served late.

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.

Issues(s) to be Decided

- Is the Tenant entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on October 25, 2018. The Landlord issued the Notice for the following reason:

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).

In the hearing, the Landlord stated that her daughter moved away to Korea for school last April 2018, and after taking classes for a couple of months, she ran into money troubles. The Landlord stated that she became aware that her daughter may need to move back home towards the end of September, due to financial troubles. The Landlord stated that she lives upstairs, and downstairs is where the Tenant lives, in a self-contained suite. The Landlord stated that she wants the downstairs rental unit back so that she can let her daughter live down there. The Landlord stated that her daughter is now home from Korea, and is sleeping in the living room upstairs, which is temporary while she waits for the Tenant to move out of the suite.

The Tenant feels the Landlord just wants him out because she does not like him. The Tenant stated that he complained about an issue with cockroaches last year, and he had a hearing with the Landlord on this matter. The Tenant stated he feels the Landlord is mad that she had to pay money to deal with the cockroaches, and now she wants him out. The Tenant feels that the Landlord's daughter could just move back into the spare bedroom, and that she does not need the full downstairs suite.

The Landlord stated that the bedroom upstairs is now filled with items and is being used as storage. The Landlord stated that they need the rental suite because they do not have enough space anymore.

Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that she intends in good faith to occupy the unit (as she has indicated on his 2-Month Notice).

Based on the evidence and testimony before me, I make the following findings:

I acknowledge that there has been a degradation in the relationship between the Landlord and the Tenant, and that the Tenant believes this has something to do with his previous complaints about cockroaches. The Tenant also pointed out that the Landlord has indicated she wants him out in the past, so he does not think this Notice is in good faith.

In response to the Tenant's allegations of bad faith, and to explain why she issued the 2-Month Notice, the Landlord expressed that she does not have the room to have her daughter stay with her anymore in the upstairs, so she issued this Notice so that her daughter could have more

room and independence living in the suite below. I note the Landlord has provided documentary evidence supporting that her daughter was in Korea, and has now returned. The Landlord provided several affidavits supporting that her daughter plans to move into the suite downstairs.

Ultimately, after looking at the totality of the situation before me, I find the Landlord's explanation regarding her daughter, and her return home is reasonable and I find there is sufficient evidence to show that her daughter intends in good faith to occupy the rental unit, as she has indicated on her 2-Month Notice.

I find it important to note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenant would be entitled to compensation as follows:

Section 51 of the Act reads,

...

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the Landlord has sufficiently supported her reasons to issue the 2-month Notice. The Tenants' application to cancel the 2-month Notice is dismissed. The tenancy is ending. Should the Landlord fail to carry out her plans laid out on the 2-Month Notice, the Tenant may seek compensation, as above.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

As the Tenant was not successful with his application, I dismiss his claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 2-Month Notice to End Tenancy is dismissed. Further, I dismiss the Tenant's request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective December 31, 2018, after service 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 and 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: December 18, 2018

Residential Tenancy Branch