



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OLC, FFT

Introduction

The tenants filed an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“*Act*”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated November 5, 2018 (“2 Month Notice”), for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, and for the recovery of the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained to the parties. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence and did confirm that they were served with documentary evidence and had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Should the landlords be directed to comply with the *Act*, regulation or tenancy agreement?

- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The parties agreed that a one-year fixed term tenancy began on January 1, 2003, and reverted to a month to month tenancy after January 1, 2004. The parties also agreed that originally, monthly rent was \$1,400.00 per month and due on the first day of each month. Currently the monthly rent is \$1,765.00 per month.

The tenants confirmed that they were served on November 5, 2018 with the 2 Month Notice dated the same date. The effective vacancy date listed on the 2 Month Notice is January 31, 2019. The tenants disputed the 2 Month Notice on November 9, 2018, which was within the allowable time limitation under the *Act* of 15 days. Page two of the 2 Month Notice indicates the reason as:

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).

[Reproduced as written]

In support of the reason stated on the 2 Month Notice, the landlords stated the male landlord intends on occupying the rental unit as of February 1, 2019 and submitted several utility bills in evidence which support that he has already changed the utilities into his name effective February 1, 2019.

The tenants stated that because they provided another 12 post-dated cheques in September 2018 that they felt a year lease had been signed, which I advised the parties was not correct. The parties confirmed their understanding that the 12 post-dated cheques were in response to a Notice of Rent Increase that was also submitted in evidence.

The tenants stated that the timing is bad for their family as they are a big family of six with an autistic child and that the tenant had recently invested \$2,000.00 in renovation to the downstairs area of the rental unit. The tenants stated that they do not believe the landlords are in the process of a divorce.

The parties were unable to reach a mutually settled agreement during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenants disputed the 2 Month Notice by stating that they did not believe the rental unit will be occupied by the male landlord. The reason indicated on the 2 Month Notice is:

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).

[Reproduced as written]

I find the supporting evidence from the landlords supports that the rental property will be occupied by the landlord(s) as the utilities have been arranged to be transferred into the name of the male landlord effective February 1, 2019, which is one day after the effective vacancy date listed on the 2 Month Notice.

As there is no hardship clause in the *Act* to cancel a 2 Month Notice, I find that the landlords have met the burden of proof and I find the 2 Month Notice issued by the landlords to be valid. I find the landlords have served the correct notice to end tenancy on the tenants and that the landlords have the right under the *Act* to end the tenancy by way of the 2 Month Notice. Therefore, **I dismiss** the tenants' application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice issued by the landlords with an effective vacancy date of January 31, 2019.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Given the above and taking into account that I find the 2 Month Notice complies with section 52 of the *Act*, I grant the landlords an order of possession effective **January 31, 2019 at 1:00 p.m.** The tenancy shall end on that date and time.

As the tenants' application is dismissed, without leave to reapply, I do not grant the filing fee.

Conclusion

I dismiss the tenants' application is dismissed in full due to insufficient evidence, without leave to reapply. I uphold the 2 Month Notice issued by the landlords.

The landlords have been granted an order of possession effective two (2) days from service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy shall end on January 31, 2019 at 1:00 p.m.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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