



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy.

The Tenant stated that on November 16, 2019 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of this evidence and the Notice was accepted as evidence for these proceedings.

December 06, 2018 the Landlord submitted 1 page of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was placed in the Tenant's mail box on December 07, 2018. The Tenant stated that she received this document on December 07, 2018 and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

Background and Evidence

The Landlord and the Tenant agree that currently rent of \$1,180.00 is due by the first day of each month.

The Landlord stated that on November 01, 2018 she placed a Two Month Notice to End Tenancy for a Landlord's Use of Property in the Tenant's mail box. The Tenant stated that she received this Notice on November 01, 2018.

The Landlord and the Tenant agree that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by December 31, 2018 and that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord stated that:

- the Notice to End Tenancy was served because her daughter intends to move into the rental unit;
- her daughter is currently housesitting and does not have a permanent residence;
- her daughter will be moving into the unit in February of 2019;
- her daughter does not wish to live in the lower suite of this residential complex, as she works shift work and does not want to be disturbed by noise from the upper suite; and
- she was not aware the Tenant and the occupant of the lower suite had a "falling out".

The Tenant stated that:

- she does not believe the daughter will be moving into the rental unit, in part, because the Landlord was reluctant to inform her who was moving into the rental unit when the Notice to End Tenancy was served to her, although that information was eventually provided;
- when the Notice to End Tenancy was served the Landlord did not know when her daughter would be moving into the unit;
- she does not believe the daughter will be moving into the rental unit, in part, because it is a three bedroom unit;
- she does not understand why the daughter would not move into the lower unit, which is smaller;
- the occupant of the lower suite also works shiftwork;
- she believes the Notice was served because on October 16, 2018 she had a "falling out" with the occupant of the lower suite, who is friends with the Landlord;
- she assumes the occupant of the lower suite told the Landlord about the "falling out"; and
- she believes the Notice was served because the Landlord wants to increase the rent.

Analysis

Section 49(4) of the *Residential Tenancy Act (Act)* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence I find that on November 01, 2018 the Tenant received the Two Month Notice to End Tenancy that is the subject of this dispute, which was served pursuant to section 49(4) of the *Act*.

Section 49(2)(a) of the *Act* stipulates that a landlord may end a tenancy for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice; is 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. To end this tenancy on December 31, 2018 in accordance with section 49(2) of the *Act*, the Landlord would have had to serve the Notice to End Tenancy on, or before, October 31, 2018.

Section 53(1) of the *Act* stipulates that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Section 53(2) of the *Act* stipulates that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find that the earliest effective date of the Notice to End Tenancy that was served on November 01, 2018 is January 31, 2019. The effective date of that Notice is therefore deemed to be January 31, 2019, in accordance with section 53(2) of the *Act*.

I find that there is insufficient evidence to conclude that the Landlord's daughter intends to move into the rental unit. I found that the Landlord's testimony was forthright and consistent in this regard.

In adjudicating this matter I placed little weight on the Tenant's submission that when the Notice to End Tenancy was served the Landlord did not know when her daughter would be moving into the unit. I find it entirely plausible that the Landlord would not know the exact date her daughter would move into the rental unit, given that the daughter was house sitting.

In adjudicating this matter I placed little weight on the Tenant's submission that she does not believe the daughter will be moving into the rental unit, in part, because it is a three bedroom unit and she does not understand why the daughter would not move into the lower unit, which is smaller. I find it entirely plausible that someone working shift work would not want to live in a lower unit, even if the upper unit was larger and less suited for a single person.

In adjudicating this matter I placed little weight on the Tenant's submission that the occupant of the lower suite also works shiftwork. I find this to be largely irrelevant, as the person choosing to live in the lower suite may not be bothered by noise; she may be a heavy sleeper; or she may opt to live in the lower suite because it is more economically feasible.

In adjudicating this matter I placed little weight on the Tenant's submission that she believes the Notice was served because on October 16, 2018 she had a "falling out" with the occupant of the lower suite, who is friends with the Landlord. As the Landlord does not acknowledge being aware of this dispute, I cannot conclude that the Notice to End Tenancy was served because of it.

In adjudicating this matter I placed little weight on the Tenant's submission that she believes the Notice was served because the Landlord wants to increase the rent. I find that this is mere speculation and is not supported by any evidence.

As there is insufficient evidence to refute the Landlord's claim that her daughter intends to move into the rental unit, I dismiss the Tenant's application to set aside this Two Month Notice to End Tenancy for Landlord's Use.

The Landlord and the Tenant are hereby advised of the provisions of sections 51(2) and 51(3) of the *Act*, which read:

(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.

(30 The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Landlord and the Tenant are also advised of the provisions of sections 51(1) of the *Act*, which reads:

(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As I the Tenant's application to set aside the Two Month Notice to End Tenancy has been dismissed, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective on **January 31, 2019**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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 21, 2018

Residential Tenancy Branch