



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On November 14, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act*.

The Tenant attended the hearing and the Landlord attended the hearing at 11:07 AM. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package by hand on November 16, 2018 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

Both parties agreed that they did not serve any evidence to the other party.

All parties 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 Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord 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 July 1, 2017. Rent was currently established at \$1,400.00 per month, due on the first day of each month. A security deposit of \$700.00 was paid.

Both parties agreed that the Notice was served by hand on October 31, 2018. The reason the Landlord 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 and subsequently made her Application to cancel the Notice as she had difficulty finding a place to move. The effective date of the Notice was December 31, 2018. Neither party submitted a copy of the Notice as evidence. Both parties agreed that the Tenant paid December rent in full.

Both parties were reminded of the 12-month compensation requirement should the Landlord not use the property for the stated purpose.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss

settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties, and the Landlord and the Tenant agreed as follows:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property of October 31, 2018 is accepted by both parties.
2. The Tenant and Landlord agreed that the Tenants will have possession of the rental unit, but must vacate the rental unit by **January 31, 2019 at 1:00 PM**.
3. The Landlord must **not** charge the Tenant rent for January 2019 as the one month's compensation based on the Notice.

This agreement is fully binding on the parties and is in full and final satisfaction of this Application.

If condition two is not satisfactorily complied with, the Landlord is granted an Order of Possession effective at **1:00 PM on January 31, 2019 after service of this Order** on the Tenants.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use Property of October 31, 2018 to be upheld.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenants if necessary, effective at **1:00 PM on January 31, 2019**. This Order must be served on the Tenants. If the Tenants fail 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 21, 2018

Residential Tenancy Branch