



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, ERP, LRE, RP

Introduction

On November 26, 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 "Act"), seeking to dispute a rent increase pursuant to Section 41 of the *Act*, seeking emergency repairs pursuant to Section 62 of the *Act*, seeking to set conditions on the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking a repair order pursuant to Section 32 of the *Act*.

The Tenant attended the hearing with A.H. as her advocate. R.B. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package and evidence by registered mail on November 28, 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 and evidence.

The Landlord confirmed that he served the Tenant the evidence by registered mail on December 21, 2018 and by hand on January 1, 2019 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with Rule 3.15 of the Rules of Procedure. As such, I am satisfied that the Tenant was served with the Landlord's evidence. Thus, this evidence was accepted and considered when rendering this decision.

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.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the

discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that her other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

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 and Evidence

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 most current tenancy started on July 1, 2018 as a month to month tenancy. Rent was currently established at \$1,100.00 per month, due on the first day of each month. A security deposit of \$350.00 was paid.

Both parties agreed that the Notice was served by being posted on the Tenant's door on November 20, 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. The effective date of the Notice was January 31, 2019. Both parties agreed that the Tenant paid January 2019 rent in full.

R.B. advised that his father suffered a serious accident requiring significant care, which R.B. provides to him. However, as R.B. lives over an hour away, this commute is onerous, whereas the rental unit is less than ten minutes away. R.B. placed his own

rental unit up for rent and provided documentation that he will be without a home as of February 1, 2019. It is his intention to move into this rental unit so that he can be closer and care for his ailing father. Documentary evidence was submitted to corroborate his father's health.

The Tenant submitted that this Notice was issued in bad faith as the Landlord had mentioned about re-renting the rental unit in the past and had served a previous Two Month Notice to End Tenancy for Landlord's Use of Property that was later cancelled. The Tenant advised that the Notice was served after she requested that the Landlord make repairs to the rental unit and that this Notice was served as a vendetta against the Tenant to have her removed instead of completing the required repairs. She questioned why R.B. would want to live in the rental unit instead of living with his parents if the intention was to care for them.

R.B. advised that he has lived with his parents before and is not willing to do so again. He also stated that the Landlord has never posted the rental unit for rent, did not say anyone would be moving in, and it is their intention that they will occupy the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that R.B. has provided testimony and submitted written evidence corroborating that he is the Landlord's son and will be occupying the rental unit once vacant. When reviewing the totality of the evidence presented, I do not find that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice. As such, I am satisfied that R.B. has substantiated that he intends to use

the rental unit for the stated purpose and as such, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on November 20, 2018 complies with the requirements set out in Section 52, I uphold the Notice, I dismiss the Tenant's Application, and I find that the Landlord is entitled to an Order of Possession that is effective **at 1:00 PM on January 31, 2019 after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Both parties were reminded of the one-month compensation requirement that is associated with serving this Notice. As well, both parties were reminded of the 12-month compensation requirement should the Landlord not use the property for the stated purpose.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **at 1:00 PM on January 31, 2019 after service of this Order** on the Tenant. 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: January 11, 2019

Residential Tenancy Branch