



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL FFT OLC RP**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("Notice") pursuant to section 49 of the Act;
- An order the landlord comply with the Act or tenancy agreement or legislation pursuant to section 62; and
- An order the landlord perform regular repairs to the rental unit pursuant to sections 32 and 62.

The landlord and the tenant attended the scheduled hearing. The landlord was assisted by his agent, KS. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution by registered mail on January 15, 2018. The tenant confirms the landlord's evidence was dropped in his mailbox on January 30, 2019. Based on the testimonies of the parties, I find each party was served with the respective material in accordance with sections 88 and 89 of the Act.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Preliminary Issues

- Tenant's request to exclude landlord's evidence for late service

The tenant sought to exclude the landlord's evidence because he received it on January 30, 2019, thirteen (13) days before the hearing. The Residential Tenancy Branch

received it on the same date. I allowed the evidence as the landlord complied with Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"):

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven (7) days before the hearing.

- Tenant's request to exclude landlord's evidence due to illegibility

The tenant sought to exclude the landlord's evidence, based on Rule 3.7 which reads "all documents to be relied on as evidence must be clear and legible." I find the single 27 page document is clear and legible and allow it.

- Tenant's objection to landlord's family member

The tenant objected to the landlord using a family member to assist and interpret. I allowed it in accordance with Rule 6.7

A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

- Arbitrator's severing of unrelated issues

Rules of Procedure 6.2 allow an arbitrator to decline to hear or dismiss unrelated issues.

Section 55 of the Act requires that if a tenant's application to cancel a Notice to End Tenancy is dismissed, then the landlord is granted an Order of Possession, as long as the Notice complies with form and content pursuant to section 52.

The tenant's application for regular repairs and for the landlord to comply with legislation are unrelated to the cancelling of the Notice and I dismiss these claims. Should the tenant succeed in cancelling the Notice, he may reapply for this relief.

Issue(s) to be Decided

Should the landlord's Notice be cancelled?

Background and Evidence

The parties agree on the following facts. The rental unit is in a house with two units, upper and lower. The tenant lives in the upper unit and another tenant lives in the lower

unit. There is no written tenancy agreement. The tenant has been living in the rental unit for approximately nine years and pays rent in the amount of \$1,350.00 on the 22nd day of each month by post-dated cheque.

The landlord personally served the tenant with the Notice on December 29, 2018. A copy of the Notice was entered as evidence and the selected purpose for ending the tenancy 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).* The effective date for vacating the rental unit is February 28, 2019.

The landlord testified that his daughter will be moving into the rental unit in the middle of March 2019 and referenced his daughter's sworn statement which was entered into evidence. The daughter also testified at the hearing. She testified she had been considering moving out of her parents' home for the past year and had been 'on the fence' about it. Last year she planned to move in and put the utilities in her name. Copies of utility bills were provided as evidence. At the end of last summer, she decided to move into the rental unit; she has time off work to move on March 15-16, 2019.

The tenant asked the witness why she wouldn't prefer to live in the basement unit and the witness responded that the upper unit is her preference.

The tenant provided an 83-page document to support his application. Pages 1-6 present the tenant's argument with respect to cancelling the Notice. The rest refers to the tenant's medical issues, repairs to be made to the rental unit, complaints about the lower unit tenant and copies of Residential Tenancy Branch orders and forms.

Under the title 'Landlords Intentions', the tenant submits that the landlord owns several other properties suitable for the daughter and the choice to end the tenancy is 'an unjust reason to vacate us.'

The tenant draws attention to the good faith requirement of a 2 Month Notice and portions of the Act which deal with fixed term tenancies. The tenant describes feeling insecure living under the fear of eviction, unprotected due to physical disabilities and no potential to obtain a job. Lastly, in the document, he mentions that he pays his rent on time and will continue to do so in the future.

The tenant testified the parties had a previous hearing before the Residential Tenancy Branch in July 2018 whereby the tenant successfully disputed the landlord's 10 Day Notice to End Tenancy for Unpaid Rent. The decision was provided as evidence. Following the cancellation of the 10 Day Notice, the tenant has asked the landlord for a variety of things related the tenant in the lower unit including laundry, garbage, parking, noise and quiet enjoyment.

The tenant testified that he believes the landlord wants to sell the property. On August 25, 2018, a realtor came to the property to assess the value of the house. In his evidence package, the tenant provided an email from the realtor dated January 22, 2019 stating the landlord asked him to assess the home's value and there was no intention to put the home on the market. The landlord provided in his evidence an email from the same realtor dated January 24, 2019 attesting there has been no discussion with the landlord about putting the home on the market.

Analysis

I find that the tenant was duly served with the Notice on December 29, 2018 in accordance with sections 88 and 90 of the Act.

Section 47(7) of the Act states a Notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 52 of the Act states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. I find that the Notice complies with the form and content provisions of section 52.

Residential Tenancy Policy Guideline PG-2 [Ending a Tenancy: Landlord's Use of Property] addresses the requirements for ending a tenancy pursuant to section 49 of the Act. The relevant portion of this guideline is Part C: Good Faith.

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intend to do what is said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose or ulterior motive for ending the tenancy. If the tenant claims the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

The landlord's daughter provided undisputed testimony and a sworn affidavit attesting that she is going to move into the rental unit. She testified that she has taken time off work to accomplish this. The landlord provided utility bills in the daughter's name associated to the rental unit to prove the daughter's intent to move in is genuine. Her preference to occupy the upper unit rather than the basement unit of a home owned by her family is both reasonable and understandable.

The tenant was unable to provide evidence to prove the landlord has an ulterior motive to end the tenancy. The tenant raised the potential of the landlord selling the rental property but provided no compelling evidence to support this.

I find that the landlord acted in good faith when serving the Notice upon the tenant.

Given these findings, the landlord is entitled to an Order of Possession for the effective date of the Notice, February 28, 2019.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 p.m. on February 28, 2019. Should the tenants or anyone on the premises 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: February 15, 2019

Residential Tenancy Branch