



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL OLC

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As the tenant acknowledged receipt of the landlord's evidentiary materials, I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated December 31, 2018 on January 1, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue – Tenant's Evidence

The landlord testified in the hearing that he did not receive the notice of rent increase documents in the tenant's evidence package. The tenant testified in the hearing that she had sent these documents to the landlord by way of registered mail, but the tenant was not able to provide the tracking numbers for the mailing.

The tenant responded that she had served both the RTB and the landlord with this evidence package, and the documents should be admitted.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

Section 88 of the *Act* establishes the following rules for service of documents.

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

Although the tenant testified that she had served the landlord in a manner required by section 88 of the *Act*, the landlord disputes this fact. The onus then shifts to the tenant to provide sufficient proof of that service. As the tenant did not provide sufficient evidence to support that the landlord was served in accordance with the *Act*, I am unable to find that the landlord was properly served with the tenant's evidence. For this reason, I am excluding the Notice of Rent Increase documents the tenant submitted as part of her evidentiary materials.

As the landlord acknowledged receipt of the remaining portion of the tenant's application and evidence, I find the landlord duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on July 1, 2015. Monthly rent is currently set at \$900.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$450.00, which the landlord still holds.

On January 1, 2019 the landlord served the tenant with a 2 Month Notice for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why he had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the landlord's son, MG, wanted to move in. MG was in attendance in the hearing and confirmed that he plans to move into the home.

The tenant testified that the 2 Month Notice was not issued in good faith, and wished to have the 2 Month Notice cancelled. The tenant testified that the landlord has previously attempted to raise the rent, but was unsuccessful after she informed the landlords that the increases were not

issued in accordance with the *Act*. The tenant testified that in August of 2017 the landlord had attempted to increase the rent by \$200.00, and the landlord made numerous subsequent remarks to her how the landlord could obtain double the monthly rent. The tenant testified that additionally, the landlord expressed concern that that her daughter would be getting married, and guests may pass through the home through her rental unit.

The tenant is also requesting an order for the landlord to comply with the *Act* as the landlord has repeatedly attempted to increase the rent.

The landlord acknowledges having issued the Notice of Rent Increase in 2017, but after finding out the Notice of Rent Increase does not comply with the *Act*, has kept the monthly rent at \$900.00, and have not issued any notices since then. The landlord testified that if they had wanted to increase the rent, the landlord had not done so despite having the opportunity to do so.

The landlord also disputes that the wedding had any impact on the issuance of the 2 Month Notice as the wedding is taking place at another location. The landlord included the wedding invitation in their evidentiary materials to support this.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may 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. The landlord's son MG testified that he intends to occupy the rental unit.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."

Although the landlord stated that they had issued the 2 Month Notice in order for the son MG to occupy the suite, the tenant raised the question of the landlord's true intentions to end the tenancy. She gave undisputed sworn testimony that the landlord had previously been

unsuccessful in issuing a Notice of Rent Increase as she challenged the fact that the amount was above the allowable amount under the *Act*. The tenant testified that since then the landlord has attempted to increase the rent, albeit through verbal request only. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find the landlord to be forthright and credible in their acknowledgment of the attempted rent increase in August of 2017. I find that although the tenant raised the question of why the landlord issued the 2 Month Notice, I note that since 2017, the landlord has kept the rent set at the original \$900.00, even though the landlord could have re-issued the Notice of Rent Increase in accordance with the *Act*. The tenant references verbal request and conversations about rent increases, but I find that the tenant has not filed any applications disputing these rent increases, nor do I find that the rent has increased by even the minimum allowable amounts by the landlord.

I find that the landlord has met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate her rental unit so that the son could move in. Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice dated December 31, 2018. I find that the 2 Month Notice complies with section 52 of the *Act*, which requires 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.

Section 55(1) of the *Act* reads as follows:

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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession for March

31, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by March 31, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

I do not find that the landlord has contravened the *Act* or tenancy agreement, and therefore I dismiss the tenant's application for the landlord to comply with the *Act*.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 2 Month Notice is valid and effective as of March 31, 2019. I issue an Order of Possession to the landlord effective March 31, 2019. The landlord is provided with this Order, and the tenant must be served with this Order in the event that the tenant does not move out by the effective date. 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: February 28, 2019

Residential Tenancy Branch