



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL MNDCT FFT**

Introduction

This hearing dealt with application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to section 49; and
- Monetary order for compensation or damages pursuant to section 67; and
- Reimbursement of the filing fee pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlords acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlords' materials. Neither party raised issues of service. I find each party served the other party in accordance with the *Act*.

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*") states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claim is not related to the tenant's application to cancel the Two Month Notice and is therefore dismissed with leave to reapply:

- Monetary order for compensation or damages pursuant to section 67.

Section 55 of the *Act* requires that when a tenant applies 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 that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice, pursuant to section 49 of the *Act*?
2. If the tenant's application is dismissed, are the landlords entitled to an Order of Possession, pursuant to section 55 of the *Act*?
3. Is the tenant entitled to a reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, I do not reproduce all details of their respective submissions and arguments here. I set out below the relevant and important aspects of the tenant's claims and my findings.

The parties agreed they entered into a residential tenancy agreement on February 1, 2018. The tenant pays rent in the amount of \$1,200.00 a month. At the beginning of the tenancy, the tenant paid a security deposit to the landlords in the amount of \$500.00 which the landlords still hold. The tenant has not provided authorization to the landlords to retain any amount of the security deposit.

The tenant submitted a copy of the tenancy agreement.

The parties agreed that on January 28, 2019, the landlords served the tenant with the Two Month Notice with an effective move-out date of March 31, 2019. The tenant filed a notice to dispute the Two Month Notice on February 4, 2019, within the ten day period.

The parties submitted a copy of the Two Month Notice in evidence. The Notice states the following with respect to the reasons for issuance:

“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 landlords testified that they live outside the province and intend to return to BC to live in their home at the end of March 2019. The male landlord testified he has employment beginning April 1, 2019 and that the female tenant is expecting a child. The landlords wish to settle into their home as soon as possible.

The tenant stated that housing in the community is very difficult to find within her budget. She testified that she attempted negotiations with the landlords in the hope they would agree that she could remain until the end of the school year. The tenant requested an additional two months so that she and her family could move at the end of June 2019. However, the parties acknowledged they did not reach an agreement; the landlord requested an order of possession effective March 31, 2019 pursuant to the Two Month Notice.

The tenant did not claim that the landlords issued the notice in bad faith.

Analysis

I find, as both parties agreed, that the landlords served the tenant with the Two Month Notice on January 28, 2019. I find the tenant filed her notice to dispute the Notice within the 10-day period.

Section 52 of the *Act* states that for a Two Month Notice to be effective, it must be in writing, be in the approved form and state the grounds for ending the tenancy. I find the Two Month Notice complied with section 52.

Section 49(3) of the *Act* provides that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit, as follows:

(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

If the tenant filed an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the Two Month Notice.

The landlords must now show on a balance of probabilities, that is, it is more likely than not, that the tenancy should end for the reasons identified in the Two Month Notice. In the matter at hand, the landlords must demonstrate that the landlords, or a close family member, intends in good faith to occupy the rental unit.

I find the landlords have met the burden of proving that they intend to occupy the unit in good faith for the reasons in support of which they submitted oral and written evidence. There is no dispute between the parties regarding the landlords' intentions or good faith.

I find the landlords have established cause for ending the tenancy.

While I understand the tenant's frustration and anxiety around having to leave the rental unit, I find the landlords have established grounds for ending the tenancy; I dismiss the tenant's application to cancel the Two Month Notice.

As the tenant's application is dismissed, I do not grant the tenant reimbursement of the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: March 11, 2019

Residential Tenancy Branch