



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant were both present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. However, she also received a second package of evidence a few days prior to the hearing. Although the evidence was not received by the Landlord or the Residential Tenancy Branch at least 14 days prior to the hearing as required by the *Residential Tenancy Branch Rules of Procedure*, the Landlord confirmed that she had reviewed the documents and did not object to the evidence being considered. The Tenant confirmed receipt of a copy of the Landlord’s evidence. The documentary evidence of both parties will be considered in this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord’s Use of Property is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

A tenancy agreement was submitted into evidence that began on June 1, 2018 on a month-to-month basis. Monthly rent on the agreement is stated as \$1,440.00 due on the first day of each month and notes that a security deposit of \$600.00 had been paid at the start of the tenancy.

The Landlord stated that she purchased the property in 2012 with the tenancy already in place and that the most recent tenancy agreement was signed to start June 1, 2018.

The Tenant stated that the tenancy began more than 7 years ago with a previous Landlord with the current Landlord purchasing the property in 2012. He stated that current rent is \$1,500.00 and that a security deposit of \$625.00 was paid at the outset of the tenancy.

The Landlord testified that on March 29, 2019 she served the Tenant in person with a Two Month Notice. The Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 end of tenancy date of the Two Month Notice was stated as May 31, 2019.

The Landlord stated that she previously served the Tenant with a Two Month Notice on January 13, 2019 but the Tenant advised her that she needed a proof of service form signed by a witness for the notice to be valid. Therefore, the Landlord stated that she served a new Two Month Notice to the Tenant in person on March 29, 2019.

The Landlord provided testimony that her daughter and daughter's two children will be moving into the rental unit. She stated that her daughter and children are currently

residing in a transition home due to leaving their previous home for safety concerns. The Landlord stated that her daughter's stay at the transition home has had to be extended due to the issue with the first Two Month Notice provided in January 2019 and the rental unit still being occupied.

The Landlord further testified that the Tenant resides in the 2-bedroom lower level unit of the residential property. She stated that the upper level also has tenants, but as it is 4-bedrooms and rents for a higher amount, the lower level unit is more affordable for her daughter to occupy.

The Landlord also noted that the rental unit is very close to where she resides which is another reason why she chose that rental unit, despite having others that she rents out.

The Landlord submitted a letter dated May 3, 2019 from a witness who stated that they are aware of the situation with the Landlord's daughter and aware that she and her children need use of the rental unit. Another letter dated May 3, 2019 was submitted from a friend of the Landlord's daughter. In the letter the friend notes that the daughter needs a safe place to live with her children and has plans to move into the rental unit.

A third letter date April 30, 2019 is from the Landlord's daughter. In the letter she states that she was removed from her home by the police due to safety concerns and that she has plans to move into the rental unit with her children. She also notes that living in this rental unit will allow her to reside close to her mother.

The Tenant confirmed receipt of the Two Month Notice in person on March 29, 2019. He stated that he did not previously receive a Two Month Notice, but instead received a letter from the Landlord on January 13, 2019 asking him to move out so her daughter could move in. He stated that this was not on the proper form.

The Tenant stated that he does not believe the Landlord's daughter is moving in. He testified that a contractor who was completing work upstairs at the residential property warned him that the Landlord did not have plans to move her daughter into the unit.

The Tenant also stated that he completed work on the home for which he has not yet been compensation which has led to a dispute between the parties. He stated his belief that this is why the Landlord wants him to move out. The Tenant also questioned why the Landlord's daughter could not move upstairs or into another rental unit owned by the Landlord.

The Landlord stated that there are issues regarding work completed on the residential property by the Tenant which she intends to solve through the court system. However, she stated that this is not connected to the tenancy or the Two Month Notice and instead she served the notice as her daughter needs a place to live.

The Tenant submitted a letter dated May 8, 2019 in which the writer of the letter notes that the Tenant maintains the rental unit and takes care of it as though it were his own. Another letter dated May 8, 2019 states that the writer used to reside in a rental unit of the Landlord's and was also told that family members were moving in, which did not occur. The Landlord stated that this was not true.

While the Tenant submitted a written statement requesting more time to move, the Landlord stated that her daughter needs to move in as soon as possible and therefore she is still seeking to end the tenancy on the effective date of the Two Month Notice.

The Landlord stated that May 2019 rent was not paid by the Tenant as compensation for receipt of the Two Month Notice.

Analysis

The parties were in agreement that the Tenant was served with a Two Month Notice on March 29, 2019. As stated in Section 49(8) of the *Act*, a tenant has 15 days to dispute the notice. As the Tenant applied for Dispute Resolution on April 3, 2019, I find that he applied within the timeframe allowable under the *Act*.

Therefore, the matter before me is whether the Two Month Notice is valid. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Two Month Notice was issued under Section 49(3) of the *Act* which states the following:

- (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.

Residential Tenancy Policy Guideline 2 defines good faith as a legal concept that a party is acting honestly and that there is no intent to defraud. Therefore, in determining good faith in this matter, the Landlord must establish that they are acting honestly as well as establish that there is no ulterior motive.

I accept the evidence from the Landlord that supports her testimony regarding her daughter's plans to move into the rental unit. In particular, the letter from the Landlord's daughter is evidence that she intends to reside in the rental unit with her children. I also accept the Landlord's testimony regarding why this rental unit was chosen and find it reasonable that the daughter would want a home close to her mother as well as a more affordable unit compared to the larger upper level unit.

Although the Tenant questioned whether the Landlord was ending the tenancy due to a dispute over work completed on the residential property and outstanding compensation owed, I do not find sufficient evidence to establish this. I do not find that the Tenant submitted sufficient evidence to establish that the Landlord is not acting in good faith or that the Landlord has ulterior motives for ending the tenancy.

Instead, I find that the Landlord served the Two Month Notice in good faith with the intent for her daughter and family to occupy the rental unit. The Landlord also confirmed her understanding of the additional compensation under Section 51 of the *Act* should a family member not occupy the rental unit as stated as the purpose for ending the tenancy on the Two Month Notice.

Therefore, I find that the Two Month Notice dated March 29, 2019 is valid. Accordingly, the Tenant's application to dispute the Two Month Notice is dismissed, without leave to reapply.

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee.

Upon review of the Two Month Notice I find the form and content to comply with Section 52 of the *Act* and therefore, pursuant to Section 55(1) of the *Act* find that the Landlord is entitled to an Order of Possession. The Order of Possession is effective on May 31, 2019, as stated as the effective date of the Two Month Notice.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **on May 31, 2019 at 1:00 pm** This Order must be served 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: May 17, 2019

Residential Tenancy Branch