



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on June 13, 2019 the Dispute Resolution Package was personally served to the Landlord. The Landlord acknowledged receipt of these documents.

In July of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on July 07, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The Tenant did not submit any evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

The Tenant did not attend the hearing until approximately six minutes after the scheduled start time of the hearing. Issues discussed prior to the Tenant's attendance were reviewed with the Tenant, which included the identity of the Landlord, service of documents, and procedural matters.

Preliminary Matter #2

At approximately 11:23 a.m. the Tenant experienced difficulty with her telephone. She was instructed to exit the teleconference and dial back into the conference, which she did shortly thereafter. I had no communication with the Landlord during this brief absence, with the exception of explaining that we would wait for the Tenant to dial back into the teleconference before proceeding.

Preliminary Matter #3

With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord's name, as it was provided by the Landlord at the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began prior to the Landlord purchasing the rental unit on August 02, 2017;
- there is no written tenancy agreement;
- rent is due by the 5th day of each month;
- on May 29, 2019 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property; and
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by July 31, 2019.

The Landlord submitted a copy of the first page of the Two Month Notice to End Tenancy. Neither party submitted the second page of the Notice to End Tenancy.

The Landlord, who had a copy of the Two Month Notice to End Tenancy with her during the hearing, stated that the reason for ending the tenancy that was cited on the Notice was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Tenant, who did not have a copy of the Two Month Notice to End Tenancy with her during the hearing, stated that she believes the reason for ending the tenancy that was cited on the second page of the Notice, was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord stated that the Notice to End Tenancy was served to the Tenant because her husband's mother, father, sister, and brother are emigrating from India and they will be moving into the rental unit. She stated that there was a delay with the emigration process but her husband's mother, father, sister, and brother now have approval to move to Canada and she expects they will arrive in approximately two months.

The Tenant stated that approximately one year ago the Landlord told her that family from India would be moving into the rental unit; that they have not arrived; and she does not know if they will ever arrive in Canada.

The Landlord and the Tenant agree that rent was increased from \$1,100.00 to \$1,150.00 in April of 2018 and it was increased from \$1,150.00 to \$1,200.00 in April of 2019.

The Tenant stated that sometime in the previous year the Landlord told her that she had a friend who was paying \$1,700.00 for a similar suite. The Landlord stated that the suite her friend is paying \$1,700.00 for is larger than this rental unit and is not, therefore, similar in value to this rental unit.

The Tenant stated that she and the original Landlord verbally agreed that she could live in the rental unit for many years. She acknowledged that she has no such agreement, either verbal or written, with the current Landlord.

The Tenant stated that she has not been able to find alternate living accommodations.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that Landlord's husband's mother, father, sister, and brother are moving to Canada from India and they intend to live in the rental unit. As the Landlord's husband's mother and father meet the definition of a close family member, as that term is defined by section 49(1) of the *Act*, I find that the Landlord has grounds to end the tenancy pursuant to section 49(3) of the *Act*.

In concluding that the Landlord's husband's mother, father, sister, and brother are moving to Canada from India, I was influenced to some degree, by the Tenant's testimony that approximately one year ago the Landlord told her that family from India would be moving into the rental unit. I find that this testimony adds credibility to the Landlord's testimony that these individuals are moving into the rental unit.

In adjudicating this matter I have placed little weight on the undisputed testimony that there has been a delay in the emigration process, as such delays are not uncommon. I find that previous delays do not refute the Landlord's testimony that the family members have now been approved to enter Canada.

In adjudicating this matter I have placed no weight on the undisputed evidence that the rent was increased from \$1,100.00 to \$1,150.00 in April of 2018 and that it was increased from \$1,150.00 to \$1,200.00 in April of 2019. Section 42(1) of the *Act* permits a landlord to increase the rent annually. As the Landlord had the right to increase the rent annually, I cannot conclude that the

annual rent increase indicates that the Landlord was acting in bad faith when she served this Two Month Notice to End Tenancy.

I am cognizant of the fact the rent increases imposed by the Landlord in 2018 and 2019 may exceed the amounts permitted by legislation (providing that the parties did not agree, in writing, to increase the rent by \$50.00 each year). Even if the rent increases exceed the allowable amounts for 2018 and 2019, the amount of the rent increase does not cause me to conclude that the Two Month Notice to End Tenancy was served in bad faith. Rather than being a sign of bad faith, I find that such a mistake is more likely to be the result of the Landlord's lack of familiarity with the *Act*.

In adjudicating this matter I have placed no weight on the Tenant's testimony that sometime in the previous year the Landlord told her that she had a friend who was paying \$1,700.00 for a similar suite. I have placed no weight on this testimony because the Landlord stated that the suite she was referring to in that conversation is larger than this rental unit and is not, therefore, similar in value to this rental unit. As the parties do not agree on the context of this conversation, I find that it has little evidentiary value.

Although the Tenant did not clearly articulate this submission, it appears that she is alleging that the Landlord is attempting to end the tenancy because she can re-rent the unit for more rent. After considering the evidence in its entirety, I find there is insufficient evidence to support this submission.

In adjudicating this matter I have placed no weight on the Tenant's testimony that she and the original Landlord verbally agreed that she could live in the rental unit for many years. As there is no evidence of such an agreement with the current Landlord, there is nothing that prevents the current Landlord from ending this tenancy because a close family member intends to move into the rental unit.

In adjudicating this matter I have placed no weight on the Tenant's testimony that she has not been able to find alternate living accommodations. I find that this submission has no bearing on whether the Landlord can end the tenancy because a close family member intends to move into the rental unit.

As I find that the Landlord has grounds to end the tenancy pursuant to section 49(3) of the *Act* and there is insufficient evidence to establish that the Notice to End Tenancy was served in bad faith, I dismiss the Tenant's application to cancel the Notice to End Tenancy.

Section 55(1) of the *Act* stipulates that if a tenant makes an application 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

On the basis of the first page of the Two Month Notice to End Tenancy that was submitted in evidence and the undisputed testimony regarding the content of the second page of the Notice to End Tenancy, I am satisfied that the Notice to End Tenancy complies with section 52 of the *Act*.

As the application to set aside the Two Month Notice to End Tenancy has been dismissed and the Two Month Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 49(2) of the *Act* stipulates that when a landlord ends a periodic tenancy pursuant to section 46(3) of the *Act*, the Landlord must give notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As the undisputed evidence is that rent is due by the fifth day of each month, a two month notice to end tenancy served pursuant to section 49(3) of the *Act* must end the tenancy on the fourth day of the month.

As this Two Month Notice to End Tenancy was served on May 29, 2019; the Notice to End Tenancy must be effective on a date that must be not earlier than 2 months after the date the Tenant receives the notice; and the tenancy must end on the fourth day of the month, I find that the Landlord does not have the right to end the tenancy on July 31, 2019, which is the declared effective date of the Notice. In order to comply with section 49(2) of the *Act*, the Notice to End Tenancy that was served on May 29, 2019 should have declared that the Tenant must vacate the rental unit by August 04, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore I find that the effective date of this Two Month Notice to End Tenancy is August 04, 2019.

The Landlord and the Tenant are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives a Two Month Notice to End Tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of twelve months' rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I therefore dismiss the application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on August 04, 2019. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: July 23, 2019

Residential Tenancy Branch