



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL RP FF

Introduction

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were provided an opportunity to provide affirmed testimony, present evidence and make submissions. No issues were raised with respect to the service of the application and respective evidence submissions on file.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be ordered to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee?

Background & Evidence

The tenancy for this two bedroom basement suite began in May 2017. The monthly rent is \$950.00 and is payable on the 1st day of each month. The rental property is managed by Jesse D. ("Jesse") on behalf of her mother Joginder D. ("Joginder") who owns the property.

The landlord served the tenant with a Two Month Notice on May 24, 2019 and has an effective date of July 31, 2019. The Two Month Notice was issued on the ground that the landlord or a close family member intends in good faith to occupy the rental unit.

Joginder testified that she currently resides with her husband in her daughter's home. Joginder testified that she is 71 years old and her husband is 80 years old. Joginder testified that her daughter's home is a two story house with 14 steps. Joginder testified that she suffers from arthritis so it is difficult for her to go up and down stairs on a daily basis. Joginder also testified that her daughter is pregnant and also has a five year old daughter so she can no longer manage the rental property on her behalf. Joginder testified that she intends to move back into her own home. The upstairs portion of her home is occupied by her niece. Joginder testified that she would reside with her husband in the lower portion of the home.

Jesse testified that in her two story house it is difficult for her mom to climb the stairs daily. Jesse testified that the kitchen in her home is upstairs. Jesse testified that she also has her in-laws residing with her in the same house. Jesse testified that she needs the additional space as she is also 5 months pregnant with her second child. Jesse testified that she no longer can look after her mom's property and asked her mom to take over her own house. Jesse testified that she has always had a nice relationship with the tenant and that the Two Month Notice was not issued with any malice as alleged by the tenant. Jesse testified that she always took care of any concerns the tenant expressed. The landlord submitted a receipt to show that repair work was completed on the roof to stop a leak and a receipt for plumbing work in response to a clogged sink. The landlord also testified that pest control was called in response to the tenant's complaint about rats in the unit and the landlord also cleaned the tenant's bedroom and belongings to decontaminate after the pest issue.

The tenant is disputing the Two Month Notice on the ground that it was not issued in good faith. The tenant submits that the landlord only issued the Two Month Notice out of malice over recent arguments they have had over repairs required in the unit. The tenant testified that she delivered a letter dated May 17, 2019 to the landlord requesting repairs to the roof, repairs to a kitchen cupboard and disinfecting her son's bedroom. The tenant testified that she has been requesting repairs to a leaking roof for over one year. The tenant submits that each time the landlord told her the roof needed replacement but she was waiting for better weather to do the work. The tenant submits that nobody ever came to repair the roof and is not sure where the landlord obtained the receipt. The tenant submits that the landlord does not want to incur the costs to replace the roof. The tenant further argues that the landlord only wants cash for the rent and since the tenant refused to keep paying in cash the landlord issued the eviction notice. The tenant testified that the landlord previously used the same reason to evict an

upstairs tenant but did not move into the unit. The tenant submits that the landlord provided no proof of her medical condition. The tenant submits that there have been three new tenant's in the upper portion of the home since she has been there and in between each tenancy she has witnessed Joginder working very hard at the property.

In reply, Jesse testified that she only requested rent to be paid in cash as it is difficult for her mom to always go to the bank to cash cheques and in the past they have had cheques bounce. Joginder testified that she did not submit any medical evidence as she didn't say she was sick but rather that she has difficulty climbing stairs due to arthritis. Joginder testified that her health overall is not bad.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the 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 they do not have an ulterior motive for ending the tenancy.

Both Joginder and her daughter Jesse provided forthright and consistent testimony in regards to the landlord's intention to occupy the rental unit. I find the landlord adequately addressed the tenant's basis for calling the landlord's intent into question. There is no dispute that the tenant communicated concerns with respect to required repairs to the roof, sink and pest control issues in the rental unit. However, I find the

landlord did take some measures to address the tenant's concerns as was demonstrated by the landlord's testimony and evidence in the form of receipts for repair work. The landlord submitted testimony and evidence of doing repair work to the roof, repair work for the clogged sink, hiring pest control and disinfecting the tenant's belongings. I find that irrespective of the repair issues, the landlord truly intends to occupy the rental unit herself. I accept the landlord's testimony that she has difficulty climbing stairs on a daily basis due to her age. I also accept the testimony of the landlord's daughter that she no longer can manage the rental unit as she is five months pregnant and requires the additional space in her own home which she shares with her five year old daughter and her in-laws. The tenant alleged that the landlord evicted a previous tenant for the same reason without following through on occupying the unit but provided no evidence in support of this allegation.

It is possible that the landlord's decision to move into her own home was partly influenced as a result of the ongoing repair issues. However, this does not take away from my finding on whether or not the landlord has a genuine intention to occupy the rental unit.

I find that the landlord has provided sufficient evidence to justify that it had a good faith intention to issue the Two Month Notice. The tenant's application to cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As this tenancy has ended, the tenant's application for repairs is dismissed without leave to reapply. As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days** after service of this order 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: August 01, 2019

Residential Tenancy Branch