



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

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 (the 2 Month Notice) pursuant to section 49;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the tenant's submitted documentary evidence via Canada Post Registered Mail on August 8, 2019. Both parties confirmed the landlord served the tenant with her submitted documentary evidence package via Canada Post Registered Mail at the end of August 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?
Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 15, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 26, 2018. The monthly rent is \$685.00 payable on the 1st day of each month.

Both parties confirmed the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use of property dated July 26, 2019 on July 26, 2019 by posting it to the rental unit door. The 2 month notice provides for an effective end of tenancy date of November 1, 2019 and one reason selected as:

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 tenant argues that when the notice was received, she communicated with the landlord via text message "asking if she was moving in. The landlord stated that it was her sister..." The tenant argues that this is not grounds to evict her as it is her sister "NOT a Parent, spouse or child as specified in the Residential Tenancy Act."

In support of this claim, the tenant has submitted a screen shot of the text message dated Saturday, July 27, 2019 between the tenant and the landlord. It states in part,

Got your notice this morning, so you're moving in?

My sister.

My sister is coming. She is moving from Fort St. John.

The landlord is now disputing this claim arguing that her sister and her mother intend to move in November 2019 to Penticton. The landlord provided a written statement that the response provided to the tenant was " I thought this was a very casual question and as we both share such good relationship I wasn't expecting that she was planning to send me a dispute notice. If I would have any idea about that then, I would definitely clarify her that my sister and my mother both are coming to stay close to me." During the hearing the landlord provided direct testimony that this was a very formal question.

The landlord also stated her sister is 39 years old and single. She has some health issues and my mother is emotionally attached to her as she is not physically strong as we are and her mother is 74 years old and "I want her not to live alone. I have plans for my mother to stay in one of our apartments along with my sister so she doesn't need to pay rent elsewhere."

The tenant further alleged that the monthly rent is low and that this is a chance for the landlord to increase the rent. The landlord disputed this claim arguing that the one bedroom unit would be occupied by both her mother and sister. The landlord further clarified that this would only be a temporary situation as it is the landlord's plan to purchase another property for the mother to reside in Kelowna. The landlord also stated that her mother lives in Toronto with another sister.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. Subsection 49(9) states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

In this case, both parties have confirmed the service and details of the 2 month notice. I find that the tenant was properly served as per the Act.

On the tenant's claim that the landlord's notice is not valid, I find that the tenant has been successful. The tenant provided undisputed evidence that after receiving the 2 months notice on July 26, 2019, the landlord was contacted and asked "...so you are moving in?" The landlord's response was "*my sister, my sister is coming. She is moving from Fort St. John*". Although the landlord repeatedly argued that besides he sister, her mother would also be occupying the one bedroom unit. The landlord failed to provide sufficient proof that her mother would be occupying the rental space, despite repeatedly stating that her mother would occupy the space. In this case, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The 2 month notice dated July 26, 2019 is set aside and cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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: October 01, 2019

Residential Tenancy Branch