



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on October 29, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord and his translator had an opportunity to present their statements and evidence, and just as the hearing was concluding, the Landlord's phone disconnected. I waited on the line, along with the Tenants, for a period of 5 minutes, but the Landlord did not reconnect. I concluded the hearing shortly after, and have proceeded to make my decision based on the evidence and testimony presented up until the time the Landlord was disconnected.

Issues(s) to be Decided

- Are the Tenants entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the Notice on August 28, 2019. The Landlord issued the Notice for the following reason:

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).

In the hearing, the Landlord stated that he issued this Notice because his mother-in-law intends to move into the rental unit. The Landlord stated that his father-in-law also came from India, lived in the house for a period of time earlier this year, but he has gone back to India because there is not enough room in the main floor of the house for everyone. The Landlord stated that he now lives on the main floor of the house with his wife, and kids, along with his mother-in-law. The rental unit is in the basement of the house. He explained that he first issued a Notice on June 1, 2019, for the same reason that he issued this Notice, so that his mother-in-law can move in. However, the Tenants applied to cancel that Notice, and were successful.

A copy of that decision was uploaded into evidence, and it is noted that the Notice from June 1, 2019, was cancelled, as there was insufficient evidence of the Landlord's good faith intention to have his mother-in-law occupy the suite. There was a lack of evidence noted to support that the Landlord's mother in law was going to move in, plus there was evidence to show the Landlord had unsuccessfully tried to raise the rent via getting the Tenants to sign a new tenancy agreement, prior to the Notice being issued.

That Notice was cancelled on July 22, 2019, and the Landlord re-issued a second Notice on August 28, 2019, which is the subject of this hearing. The Tenants feel this is just another attempt to get them to move so the Landlord can re-rent for more money. The Tenants stated that the Landlord's Notice should be set aside because of the legal principle of *Res Judicata*. The Tenants stated that this Notice is issued for the same reasons, for the same rental unit, and to the same people, so they should not be allowed to re-issue something which has already been determined.

The Landlord stated that the first time he issued the Notice, and had the hearing (where the Notice was set aside), he did not really understand the process, and was unaware that he had to provide more evidence to show that his mother-in-law was moving in. The Landlord stated that he has collected more supporting evidence to support his reasons for issuing the Notice. However, he noted that it is issued for the same reason as before.

The Tenants also provided a copy of a recent judicial decision titled *Zeilstra v. Samra BCSC 2019*. The Tenants cited this case because it is nearly identical, factually, and supports that the Landlord should not be able to re-issue a second Notice for the same reason, simply to re-try the same issue.

Analysis

First, prior to making any determinations regarding the merits of the Notice, and whether the Landlord has provided sufficient evidence to prove his good faith intentions to have his mother-in-law occupy the unit, I must examine the issue of *res judicata*.

I note that *res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

I have also taken note of the case *Zeilstra v. Samra BCSC 2019*, provided by the Tenants. I find that case is not sufficiently distinguishable as to warrant a different outcome than what was provided for in that case. Keeping in mind the principles set out in that case, I find the Landlord was precluded from issuing the second Notice on August 28, 2019, for exactly the same reasons that he issued the first Notice in June of 2019. I find the Notice before me for this hearing, which was issued on August 28, 2019, is hereby cancelled and is of no force or effect, keeping in mind the principles of *res judicata*.

Although the Landlord is not entitled to simply re-issue another Notice for the same reason, with the same factual basis, I note there is nothing precluding him from issuing other legal Notices to End Tenancy, under the Act, if the facts, reasons and grounds are different or distinguishable from this Notice, and there is sufficient basis for it. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenants' application is successful. The Notice is cancelled.

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 29, 2019

Residential Tenancy Branch