



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT MNDCT RP

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49;
- authorization to recover the filing fee for this application pursuant to section 72.
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses.

Since both parties attended the hearing and no objections were raised regarding service, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the Two Month Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the Two Month Notice and recovery of the filing fee for this application.

Issue(s) to be Decided

Is the tenant entitled to an order for cancellation of the landlord's Two Month Notice pursuant to section 49?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenant is disputing a Two Month Notice which was delivered on August 24, 2019. The Two Month Notice stated an effective move-out date of October 31, 2019. The tenant acknowledged receipt of the notice.

The stated reason on notice for ending the tenancy was that the landlord, or the landlord's close family, wanted to occupy the rental unit. The landlord testified that the landlord's mother and the landlord's daughter, S.K. intended to occupy the rental unit. The landlord testified that the landlord's mother and daughter currently reside upstairs in the house but they want to occupy the rental unit. The landlords testified that their mother does not currently have a room and she is sleeping on a sofa upstairs. The landlords also testified that their daughter, S.K. would like to move into the rental unit for

increased privacy to facilitate her studies. The landlord's daughter S.K. testified and corroborated these intentions.

The tenant testified that the landlord previously attempted to increase the rent above the statutory limit. In addition, the tenant testified that he recently made a repair request and the landlord issued the Two Month Notice shortly thereafter. The tenant argued that the Two Month Notice was retaliatory. The landlord denied this.

Analysis

To end a tenancy for landlord's use of the property, the landlord has the burden of proving the reasons on the Two Month Notice.

The tenant raised the issue of the intention of the landlord. The tenant questioned whether the landlord's plan to occupy the unit was genuine. The tenant expressed a lack of confidence in the landlord's stated plan the landlord will occupy the unit himself. The tenant argues the landlord has not issued the Two Month Notice in good faith but instead issued the notice as retaliation because the tenant has asserted his rights regarding rent increases and repairs.

The Residential Tenancy Branch Policy Guideline # 2 states good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 Two Month Notice.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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.

The tenant has raised the good faith intention of the landlord in this matter by testifying that the landlord has issued the notice shortly after the tenant made a repair request. As such, the burden shifts to the landlord to establish that they truly intended to do have a close family member occupy the rental unit and they did not have an ulterior motive for ending the tenancy.

I find that the landlord has satisfied this burden. I find that landlord's undisputed testimony that the landlord's mother was currently sleeping on a sofa and the wanted to have a room for to occupy to be sufficient explanation for the landlord's intent to occupy the rental unit. In addition, I find that S.K. is a credible witness I find that her testimony that she wanted to occupy the rental unit to facilitate her studies to also be an adequate explanation of the landlord's intentions to occupy the rental unit. Accordingly, I dismiss the tenant's application to cancel the Two Month Notice.

Section 55 of the *Act* requires that, when a tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy is dismissed, I must grant the landlord an order of possession if the landlord issued a notice to end tenancy in compliance with the *Act*.

I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenants.

Since the tenant has not prevailed in this matter, I dismiss the tenant's application for reimbursement of the filing fee pursuant to section 72.

Conclusion

I dismiss the tenant's application for the cancellation of the Two Month Notice and the tenant's application for reimbursement of the filing fee without leave to reapply.

I dismiss all the tenant's claims, except the tenant's claims for cancellation of the Two Month Notice and reimbursement of the filing fee, with leave to reapply.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be 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: October 31, 2019

Residential Tenancy Branch