



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELOWNA FRIENDSHIP CENTRE and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ FFT LAT LRE OLC

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 failing to qualify for subsidy ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 9:43 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was personally served with the tenant's application for dispute resolution and evidence package approximately 4 weeks before the hearing date. The tenant could not recall the exact date of service, but testified that he attended the office of the landlord, and served the receptionist with the package to the attention of JB. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's application and evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice dated September 27, 2019, which was personally served to him on the same date, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began in October of 2016. Monthly rent is currently set at \$790.00, payable on the first of every month. The tenant testified that he had paid the landlord a security deposit, which the landlord still holds. The tenant testified that the amount was half of the monthly rent at the time, but he could not recall the exact amount.

On September 27, 2019 the landlord issued the 2 Month Notice for the following reason:

- The tenant no longer qualifies for the subsidized rental unit.

The tenant testified that one day the landlord had demanded that he provide documents to verify his income, although he was never previously required to do so. The tenant testified that he needed time to obtain these documents, which he now has. The tenant testified that the landlord did not give him the time to obtain the supporting documents, and issued him the 2 Month Notice for no longer qualifying for the subsidized housing.

The tenant is also requesting orders to change the locks, and set restrictions or suspend the landlord's right to enter his rental unit. The testified that the landlord had entered his rental unit as well as well as others', without their knowledge or proper

notice under the Act. The tenant testified that the other tenants were too fearful to testify or file a complaint. The tenant provided a document in his evidentiary materials from the landlord apologizing for a misunderstanding about a fire inspection without 24 hours notice prior to entry.

Analysis

Subsection 49.1(2) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if:

Subject to section 50 [tenant may end tenancy early] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on October 10, 2019, 14 days after receiving the 2 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

In the absence of any submissions from the landlord for this hearing, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated September 27, 2019, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I remind the landlord of their obligations under the *Act* as stated above.

I am not satisfied that the landlord had contravened the *Act* to the extent that requires the locks to be changed, or for the landlord's right to enter the tenant's rental unit to be suspended. Accordingly, I dismiss these portions of the tenant's application with leave to reapply.

As the tenant did not pay a filing fee for this application, the tenant's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated September 27, 2019 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord is reminded of their obligations under section 29 of the *Act* which prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission.

The tenant's application to change the locks or restrict the landlord's access to his rental unit is dismissed with leave to reapply.

The remaining portions of the tenant's application is dismissed without leave to reapply.

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: November 22, 2019

Residential Tenancy Branch