



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 30, 2019 ("2 Month Notice"), pursuant to section 49.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that he is a 50% co-owner of the rental unit and that he had permission to represent the other co-owner with a 50% share, at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord stated that he posted the landlord's evidence package to the tenant's door on October 25, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on October 28, 2019, three days after its posting.

The landlord testified that he personally served the tenant with the landlord's 2 Month Notice on August 30, 2019. He said that his brother and the tenant's mother both witnessed this service. The notice indicates an effective move-out date of October 31, 2019. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 2 Month Notice on August 30, 2019. In his application, the

tenant indicated that he personally received the 2 Month Notice on August 30, 2019 and he disputed it in this application.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 2 Month Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 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?

Background and Evidence

While I have turned my mind to landlord's documentary evidence package and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on May 1, 2019 for a fixed term ending on October 31, 2019. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit. The rental unit is the lower floor of the same house where the landlord lives on the upper floor.

A copy of the 2 Month Notice was provided for this hearing. The landlord identified the following reason for seeking an end to this tenancy on page 2 of the notice:

- *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 landlord stated that he issued the 2 Month Notice to the tenant because he wants to move into the rental unit. He said that he currently lives on the upper floor of the house and he wants to use the lower floor as well for his own space. He explained that the laundry is located there, as well as another bathroom, and he can use some space for his office too. He claimed that he currently resides with another tenant on the upper floor, so he needs the extra space on the lower floor. He maintained that he spoke to a building inspector about making the whole house one unit, instead of two separate units, and he was told that he could do so. The landlord claimed that he does not intend to re-rent the unit to other tenants.

The landlord testified that a previous RTB hearing occurred on August 30, 2019, after which a decision, dated September 4, 2019, was issued by a different Arbitrator ("previous hearing" and "previous decision"). The file number for that hearing appears on the front page of this decision. The landlord provided a copy of the previous decision with his evidence. He stated that hearing was because the tenant got aggressive with the upstairs tenant at the time, causing him to move out. He said that there was an issue with the laundry. He maintained that the Arbitrator said that the laundry was in a self-contained suite, so the landlord had to make an agreement with the tenant in order to use it.

Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after he receives the notice. The tenant received the 2 Month Notice on August 30, 2019 and filed his application to dispute it on September 4, 2019. Therefore, the tenant is within the fifteen-day time limit under the *Act*.

Section 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part:

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement...

I accept the landlord's testimony that he intends to move into the rental unit. I accept that the landlord wants the additional space, since he shares the upper floor with another tenant. I accept that the landlord wants to use the space, which includes a second bathroom, the laundry, and another area for an office.

I find that the landlord issued the notice in good faith. Although there was a previous RTB hearing on August 30, 2019, the same day that the landlord issued the 2 Month Notice to the tenant, the landlord did not know the outcome of that decision until September 4, 2019, after he issued the notice. I accept that the previous hearing was related to another tenant, who vacated the rental unit.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends to move in to the rental unit in good faith to occupy it. I find that the landlord has met the onus of proof under section 49 of the *Act*.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. The landlord claimed that the tenant got one month of free rent for October 2019, pursuant to the 2 Month Notice. The landlord said that the tenant has not paid rent for November 2019 and the effective date of the 2 Month Notice has already passed. I find that the landlord's 2 Month Notice, dated August 30, 2019, complies with section 52 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises 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: November 06, 2019

Residential Tenancy Branch