



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, MNDCT, OLC, RP, RPP, RR, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use or Property (the “Two Month Notice”), to restrict or suspend the Landlord’s right to enter, for monetary compensation, for an order for the Landlord to comply with the *Act*, *Regulation* and/or tenancy agreement, for regular repairs, for the return of personal property, for a reduction in rent due to repairs, services or facilities agreed upon but not completed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and Landlord were both present for the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant stated that he did not receive a copy of the Landlord’s evidence. The Landlord stated that a copy of his evidence was served to the Tenant by registered mail and provided the tracking number which is included on the front page of this decision.

Entering the tracking number on the Canada Post website confirms that the package was mailed on November 5, 2019 and a notice card was delivered on November 6, 2019 but was not claimed. As such, I find that the Tenant was served with the evidence in accordance with Section 88 of the *Act* and despite not claiming the mail is deemed to have received the package 5 days after it was sent, pursuant to Section 90 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

As stated by rule 2.3 of the *Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other and unrelated claims may be dismissed. As such, due to the urgent matter of a notice to end tenancy, only the dispute over the Two Month Notice will be addressed in this decision, as well as the Tenant's claim for the recovery of the filing fee. I exercise my discretion to dismiss the remainder of the Tenant's claims, with leave to reapply. The parties were informed of this at the hearing.

Issues to be Decided

Should the Two Month Notice be cancelled?

If the Two Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenant testified that the tenancy began in October 2018 with the former property owner/landlord. The Landlord testified that he purchased the property in September 2019 with the tenancy already in place.

The parties agreed that rent in the amount of \$600.00 is due on the first day of each month and that no security deposit was paid.

The Landlord testified that he posted the Two Month Notice on the Tenant's door on October 10, 2019. The Tenant confirmed receipt on or around October 11, 2019. A copy of the Two Month Notice dated October 9, 2019 was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 effective end of tenancy date of the Two Month Notice was stated as December 31, 2019.

The Landlord stated that the rental unit is a small farmhouse on the property. He submitted that he purchased the property with the intention for his family to reside on the residential property and that the Tenant was notified verbally of these plans when the property was purchased. The Landlord lives next door. The Landlord stated that his daughter has plans to move into the rental unit as soon as possible. He noted that she is currently attending school and needs a place to live rent free.

The Landlord submitted a letter from his daughter which states her intent to move into the rental unit and that she is the daughter of the property owner/Landlord.

The Tenant stated that he was never notified of the Landlord's intention to move a family member in until receipt of the Two Month Notice. He stated his position that he does not believe someone would move into the rental unit as it is currently unliveable due to the number of repairs needed. He stated that there are concerns with the pipes freezing in the winter and water dripping through the roof. The Tenant submitted photos of the rental unit.

The Landlord stated that he was not previously aware of the extent of repairs needed as the Tenant has not allowed him access to the rental unit. He also stated his position that the Tenant has caused damage to the rental unit. However, he stated that he will have a contractor attend and complete the urgent repairs needed. The Landlord stated that despite some repairs required, that the rental unit is not unliveable and if needed will be repaired.

The Tenant stated that the previous landlord had purchased material to complete repairs, but that the current Landlord had the materials removed from the property which would indicate that he has no intention to complete repairs.

The Tenant also stated that it is a difficult time of year to find a new place to rent and as such he will need until the spring to move. The parties discussed settlement but were unable to reach an agreement.

Analysis

As stated in Section 49(8) of the *Act*, a tenant has 15 days in which to dispute a Two Month Notice. The parties agreed that the notice was posted on the Tenant's door on or around October 10, 2019 and the Tenant applied to dispute the notice on October 23, 2019. Therefore, as the Tenant applied to dispute the notice within the time allowable the matter before me is whether the Two Month Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

Residential Tenancy Policy Guideline 2a provides clarification on ending a tenancy for landlord's use of the property and notes that a landlord may end a tenancy if they or a close family member intend, in good faith, to occupy the unit. This policy guideline also provides a definition of "good faith" as follows:

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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

In this matter, I accept the testimony of the Landlord that his daughter intends to move into the rental unit and find that this is supported by the letter from his daughter that was included as evidence.

I do not find evidence of an ulterior motive of the Landlord. Although the Tenant brought up repair issues, I am not satisfied that the Landlord served the Two Month Notice in an attempt to avoid repair issues.

The Tenant stated that the rental unit is "unliveable" but also noted his intent to stay in the home for the next few months or until he can find a new place to live, which would indicate that the rental unit is liveable, despite possibly being in need of some repairs.

The Landlord also stated that some damage to the rental unit had been caused by the Tenant and that the Tenant has not allowed access to the rental unit to assess repairs needed. In the absence of sufficient evidence that would establish that the Tenant notified the Landlord of repairs needed, that proper notice to enter was provided and

that the repairs were still not completed, I am not satisfied that the Landlord has been avoiding completion of repairs.

The Landlord stated that there may be some repairs needed which he intends to complete if urgent. I did not find the testimony of the Landlord to indicate that the Landlord was attempting to avoid repairs. Furthermore, the Landlord stated issues with gaining access to the rental unit to look at the repair issues and conduct repairs.

I did not find the Landlord to be unwilling to conduct repairs, instead I accept his testimony that he was not aware of the extent of repairs but will assess and conduct repairs as soon as possible.

Based on the testimony and evidence of both parties, I do not find evidence of deception on the part of the Landlord or that there is an ulterior motive on the part of the Landlord. Instead, I am satisfied that the Landlord intends to move his daughter into the rental unit as he testified to and as stated in a letter from his daughter and that he plans to complete urgent repairs as needed.

Therefore, I find that the reasons for the Two Month Notice are valid and that the Landlord intends for a close family member to move into the rental unit. As such, I dismiss the Tenant's application to dispute the Two Month Notice.

As the Tenant was unsuccessful, I also decline to award the recovery of the filing fee paid for the application.

Upon review of the Two Month Notice I find that the form and content comply with Section 52 of the *Act* and therefore, pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession. I award the Landlord an Order of Possession effective December 31, 2019 at 1:00 pm.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective **December 31, 2019 at 1:00 pm**. This Order must be served on the Tenant. Should the Tenant 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 19, 2019

Residential Tenancy Branch