



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 for dispute resolution, seeking to cancel a notice to end tenancy, issued by the landlord for the landlord's use of the property. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented by her agent. The landlord represented herself and was accompanied by her legal counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental unit?

Background and Evidence

The rental unit is a two level 3-bedroom home. The landlord purchased the rental property from her step father in October 2014. On October 03, 2019 the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. This notice was amended to include missed information and was served on the tenant on October 12, 2019. The two-month notice was issued on the grounds that the landlord and her two children intend to occupy the rental unit. The tenant disputed the notice in a timely manner on the grounds that it was not issued in good faith.

The tenant also made reference to two prior notices to end tenancy that were served on the tenant for non payment of rent. The tenant applied to dispute the notices and the notices were set aside, and the tenancy continued.

The tenant stated that the landlord has served this notice to end tenancy for landlord's use of property in bad faith as the prior two attempts to end the tenancy were dismissed. The landlord submits that she is currently living in her primary residence but would like to move into the rental property for sentimental and financial reasons. The landlord stated that she grew up in this home and would like to move back in.

Analysis

Section 49 of the *Act* contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the *Act*, a tenant may dispute a two-month notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the two-month notice. Further, two-month notices have a good faith requirement.

Residential Tenancy Policy Guideline #2 "Good Faith Requirement when Ending a Tenancy" provides the following guidance: 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 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 two-month notice. 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.

Based on the sworn testimony of both parties, and the documents filed into evidence, I find on a balance of probabilities that it is more likely than not that the landlord intends in good faith to occupy the rental unit. The evidence supports a finding that the landlord does have a good faith intention.

The tenant argued that the landlord has failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to move into the rental unit. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has met the good faith requirement, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00 p.m. on January 01, 2020.**

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