



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, MT, 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 of Property (the “Two Month Notice”), for an extension of time to dispute the Two Month Notice, to dispute a rent increase, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Tenant (the “Agent”) was present for the hearing as was the Landlord. The Landlord’s daughter was present as a witness as the start of the hearing and was asked to exit the hearing until it was time to present her witness testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Agent confirmed that the Tenant received a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

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

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

At the outset of the hearing the Landlord requested that the Tenant be required to participate in the hearing instead of the Tenant’s agent. However, it was confirmed that a party is allowed to have authorize an agent to represent themselves, as stated by rule 6.7 of the *Rules of Procedure*. The Tenant also submitted a signed letter dated September 19, 2019 in which

written authorization was provided for the agent to represent the Tenant. Therefore, the hearing continued with the agent as a representative of the Tenant.

Issues to be Decided

Should the Tenant be granted an extension of time to dispute the Two Month Notice?

Should the Two Month Notice be cancelled?

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

Was the Tenant issued an illegal rent increase?

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

Background and Evidence

The parties agreed to the following tenancy details: the tenancy began on October 1, 2016 and is currently on a month-to-month agreement. Monthly rent is \$2,900.00. A security deposit of \$1,400.00 and a pet damage deposit of \$500.00 was paid at the start of the tenancy.

The Agent stated that rent is due on the first day of each month while the Landlord stated that rent is due on the last day of each month.

The Landlord submitted a copy of a fixed term tenancy agreement set to begin October 1, 2019 which indicates on it that the agreement was cancelled. The parties both confirmed that this new agreement was not signed.

The Landlord testified that he served the Tenant with a Two Month Notice by email on August 19, 2019. A copy of this notice was submitted in the Landlord's evidence and indicates that it was "retracted" by the Landlord. The Landlord stated that the Tenant notified him that the entire notice was not received in the email which is why he retracted it. The Landlord testified that he therefore signed and served a new Two Month Notice.

A copy of the second Two Month Notice was submitted into evidence and was dated September 30, 2019. The effective end of tenancy date was stated as December 31, 2019. The Landlord testified that this notice was served to the Tenant on September 28, 2019 or September 30, 2019 by leaving it in the Tenant's mailbox.

The Agent testified that the Tenant received the first Two Month Notice on August 19, 2019 by email but that the form was not complete and therefore the Tenant did not understand his rights

to dispute the notice. The Agent confirmed that the second Two Month Notice was received around September 29, 2019 in the Tenant's mailbox.

The Landlord stated that the Two Month Notice was served to the Tenant due to his plans to reside in the rental unit with his children. He submitted into evidence a letter dated September 30, 2019 in which the writer of the letter states that they are moving into the rental unit to be close to work and to reside as a family. A second letter dated September 30, 2019 states that same as the first. A third undated letter also states that they will be moving into the rental unit with their father and siblings. The letters note that they are currently commuting a far distance for work and moving into the rental unit will reduce their commute time.

The Landlord's daughter joined the hearing as a witness. The witness was affirmed and explained that she stopped studying abroad over the summer and began looking at apartments. However, she stated that they decided as a family that it made sense to move into the rental unit to be closer to work. The witness stated that she is currently moving in between places waiting to move into the rental unit. She stated that she can't remember the exact dates that they decided to move into the rental unit but confirmed that it was at the end of July 2019 that she decided to not go back to school.

The Agent questioned the Tenant's dates as the first Two Month Notice was served in August 2019 and therefore the daughter had to have decided prior to that to move in.

The Landlord stated that it was mid-August 2019 when they decided as a family that it was best to move into the rental unit.

The Agent testified that the Tenant and Landlord discussed a rent increase on August 16, 2019 by email. The Agent noted that although the Landlord wanted to increase the rent by \$100.00 instead of the legally allowed amount, the Tenant was in agreement to pay an additional \$100.00 as long as the Landlord abided by the requirement to not start the increase for three months.

The Agent stated that as the Tenant received a Two Month Notice three days later, they believe it was not issued in good faith and instead was due to the dispute over the rent increase. The Agent stated his position that the Two Month Notice seemed retaliatory due to this. He also noted that the Landlord should have sat down and discussed the Two Month Notice with the Tenant instead of just sending it initially by email.

Regarding the dispute over the rent increase, the Agent stated that the Tenant received a rent increase notice on August 16, 2019 to increase the rent by \$100.00 beginning on October 1, 2019. However, the Agent stated that after informing the Landlord of the rules regarding rent increases the Tenant received the revised rent increase notice on September 28, 2019 for the amount of \$72.50 set to begin on December 1, 2019. The Agent stated that the Tenant is

accepting of the amount but that the increase should start on January 1, 2020 for a full three month's notice.

The Landlord submitted a revised copy of the rent increase which states the new monthly rent amount of \$2,972.50 set to begin on December 1, 2019. The notice was signed on August 16, 2019.

The Landlord stated that he does not care about the rent increase or when it starts. He stated that the amount of \$72.50 or \$100.00 per month will not make a difference to him and noted that the rent increase is no longer relevant given that the Landlord and his family need to move into the rental unit.

Analysis

As stated in Section 49(8)(a) of the *Act*, a tenant has 15 days to dispute a Two Month Notice. Although the Tenant initially received the Two Month Notice by email on August 19, 2019, I accept the testimony of both parties and find that the notice was withdrawn by the Landlord, as also indicated through the Landlord's evidence.

The Landlord testified that a second notice was served to the Tenant on September 28 or September 30, 2019. The Agent stated that it was received on September 29, 2019, while the copy of the notice was dated September 30, 2019. Therefore, due to the uncertainty of service dates and due to the date on the notice, I find that it was served to the Tenant on or around September 30, 2019.

The Tenant applied to dispute the first Two Month Notice on September 14, 2019, however as stated I do not find that this Two Month Notice dated August 19, 2019 is currently in dispute as it was withdrawn by the Landlord. However, the Tenant applied to dispute the second Two Month Notice through an amendment filed on October 4, 2019. Therefore, I find that the Tenant applied within the 15 days allowable. As such, the matter before me is whether the Two Month Notice is valid.

Although the Tenant applied for an extension of time to dispute the One Month Notice, I do not find it necessary to consider this as I find that the first notice was cancelled and as stated, that the Tenant filed the amendment to dispute the second notice within the allowable timeframe.

As stated by rule 6.6 of the *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.

Section 49(3) of the *Act* states the following:

(3) A landlord who is an individual 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.

Section 49(1) of the *Act* provides a definition for 'close family member' which includes the children of the individual.

I accept the Landlord's testimony that he intends to reside in the rental unit along with his children. I also find sufficient evidence from the Landlord to support this testimony, such as the letters from his children and the witness testimony from his daughter.

However, as the Agent questioned the good faith intentions of the Landlord, I refer to *Residential Tenancy Policy Guideline 2A* which defines 'good faith' as having honest intentions with no ulterior motive.

The Agent referenced the rent increase notice that was provided to the Tenant just 3 days prior to the initial service of the Two Month Notice and of which the parties were not in agreement to. While I do find that the two notices were provided close together, I do not find sufficient evidence to establish that the Landlord has issued the Two Month Notice due to a desire to increase the rent.

In particular, with a \$2,900.00 monthly rent, I do not find that the disputed amounts between \$100.00 and \$72.50 are significant such that the Landlord would end the tenancy for this. I also do not find sufficient evidence to establish that the delay in the start of the rent increase is the motivation behind the Landlord's service of the Two Month Notice. Instead, I find the dispute over the rent increase to be a separate matter and as stated I accept the evidence before me that the Landlord does intend to occupy the rental unit with close family members.

While the Agent also questioned the timing of the decision as stated by the witness, I also do not find this to be sufficient to establish that the Two Month Notice was not issued in good faith. Instead, I find it reasonable that the witness would not remember exact dates of when the decision was made to move into the rental unit, and I accept the testimony of the Landlord that they made the decision as a family in mid-August 2019, which is when the initial notice was served.

Therefore, I find that the Landlord has provided sufficient testimony and evidence for me to be satisfied that the Two Month Notice dated September 30, 2019 is valid and as such, the Tenant's application to cancel the Two Month Notice is dismissed.

Upon review of the Two Month Notice dated September 30, 2019 I find that the form and content comply with Section 52 of the *Act* and therefore find that the Landlord is entitled to an Order of Possession effective December 31, 2019; the effective end of tenancy date as stated on the Two Month Notice.

Regarding the rent increase, as stated in Section 43(1) of the *Act*, a rent increase must be calculated in accordance with the regulations. Although the first rent increase notice provided was over the allowable increase amount of 2.5%, I find that this was corrected on or around September 29, 2019 when the Landlord provided an amended rent increase form with an increased amount of \$72.50 per month. As this amount is exactly 2.5%, I find that the revised amount is within the regulations regarding the allowable amount.

As for the date the rent increase is to start, Section 42(2) of the *Act* states that a tenant must be provided at least 3 months notice before a rent increase takes effect.

Although the rent increase note is dated in August 2019, the amended version was not received by the Tenant until around September 30, 2019. Therefore, I find that three full months would mean that the rent increase would start on January 1, 2019; based on the service date instead of the date of the notice.

However, as the tenancy is ending on December 31, 2019, I find that the new rent increase amount will not apply to the Tenant during the time the Tenant resides in the rental unit.

As the Tenant was partially successful with the application regarding the rent increase, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00 and issue a Monetary Order for this amount.

I also remind the parties regarding the Tenant's rights to compensation under Section 51 of the *Act*, including that the Tenant is entitled to one month compensation due to the tenancy ending with a notice served under Section 49 of the *Act*.

Conclusion

The Tenant's application to cancel the Two Month Notice is dismissed.

Pursuant to Section 55 of the *Act*, 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.

The monthly rent increase of \$72.50 is effective January 1, 2019 in accordance with Section 42 of the *Act*.

Pursuant to Section 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$100.00** for the recovery of the filing fee paid for the application. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as

possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: November 26, 2019

Residential Tenancy Branch