



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, owner D.A.S., owner R.R.S. and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenant's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Amend

The landlord testified that she goes by the shortened version of her first name which was listed in the tenant's application for dispute resolution. During the hearing the

landlord provided the full version of her first name. Pursuant to section 64 of the *Act*, I amend the tenant's application to list both versions of the landlord's first name.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2008 and is currently ongoing. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant to the landlord.

The landlord testified that she personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of January 1, 2019 (the "Two Month Notice") on October 28, 2019. The tenant testified that he personally received the Two Month Notice from the landlord but could not recall on what date. The Two Month Notice was entered into evidence.

The Two Month Notice states the following reason for ending this 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 landlord testified that she and some of her family members are joint owners of the subject rental property and that the ownership of the subject rental property is divided

into 6 equal interests. The tenant entered into evidence a Land Title Search stating the following people have an undivided 1/6 interest as joint tenants:

- R.R.S.;
- R.W.S. and N.M.S.;
- H.N.G. and R.B.G.;
- S.R.J.S.;
- the landlord and S.J.F.; and
- D.A.S. and K.A.S.

The landlord testified that her daughter plans on moving into the subject rental property on January 1, 2020 because the couple she is currently living with are expecting a baby and need her room for the baby. The landlord entered into evidence a signed letter from her daughter stating that she plans on renting the subject rental property as of January 1, 2020.

Owner D.A.S. testified that his daughter plans on moving into the subject rental property with the landlord's daughter on January 1, 2020. Owner D.A.S. testified that his daughter currently goes to school and works several jobs and lives far away from her school. Owner D.A.S. testified that his daughter needs to live closer to her school in order to balance both work and school. The landlord entered into evidence a signed letter from owner D.A.S.'s daughter confirming owner D.A.S.'s testimony.

The tenant testified that he is disputing the Two Month Notice because the landlord is acting in bad faith. The tenant testified that he believes the landlord is not acting in good faith because she is not the landlord. The tenant testified that the landlord is not actually the landlord because she doesn't own the property in full but owns a 1/6th interest in the subject rental property and therefore is not a landlord and was not entitled to issue the Two Month Notice.

The landlord testified that she acts as the landlord on behalf of all the listed owners of the subject rental property. The landlord entered into evidence signed letters from all of the other owners of the subject rental property except owner R.R.S. stating that the landlord has authority to act as their agent for the subject rental property. The landlord entered into evidence an email from owner R.R.S. stating that the landlord has authority to act as her agent for the subject rental property.

The landlord testified that she has acted as the agent for all of the owners for the entire tenancy and the tenant has provided her with his rent cheques. The tenant testified that

he originally brought his rent cheques to the landlord's family car dealership and that he made the cheques out to the landlord because she was the sales manager and responsible for all financial transactions, not because she was his landlord.

The tenant testified that he believes that the landlord is acting in bad faith because the landlord did not specify on the Two Month Notice which family member was planning on moving in.

The landlord testified that the Two Month Notice did not require her to specify which close family member was going to move in and so she did not provide the tenant with that information.

Analysis

Based on the testimony of the landlord I find that service of the Two Month Notice was effected on October 28, 2019.

Section 49(3) of the *Act* states that 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* states that a "close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse.

Section 1 of the *Act* defines a landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the evidence and testimony of both parties, I find that the landlord, who is an individual, is a 1/6th owner of the subject rental property. Based on the letters and email from the other owners of the subject rental property, I find that the landlord acted as the agent for all owners of the subject rental property and exercised powers and performed duties, such as the collection of rent, permitted under the *Act* and tenancy agreement. Based on my above finding, I find that the landlord was a landlord as defined by the *Act* and was permitted under section 49(3) to serve the tenant with the Two Month Notice.

Policy Guideline 2 states that good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find that the landlord was not acting in bad faith by issuing the tenant the Two Month Notice, because she is a landlord as defined under section 1 of the *Act* and was permitted to do so. I find that the landlord did not misrepresent her status as a landlord to the tenant.

I find that the landlord was not acting in bad faith by not providing, on the Two Month Notice, the names and relationship of the close family members who were going to move into the subject rental property. I find that the Two Month Notice does not require the landlord to provide details of the relationship and names of the persons moving in.

The Two Month Notice only required to landlord to select a ground for the eviction notice, which the landlord completed when she checked the box stating:

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 tenant did not dispute the landlord and owner D.A.S.'s testimony that their daughters planned on moving into the subject rental property. Based on the testimony of the landlord and owner D.A.S. and on the written letters of their respective daughters, I find that the landlord has proved that her child and the child of owner D.A.S. plan on moving into the subject rental property effective January 1, 2019. I therefore dismiss the tenant's application to cancel the Two Month Notice.

Upon review of the Two Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 55 of the *Act* states that 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.

I find that since the Two Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the Two Month Notice was dismissed, the landlord is entitled to an Order of Possession effective January 1, 2020, the effective date of the Two Month Notice.

Since the tenant was not successful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

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

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 1, 2020**, which should 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: December 19, 2019

Residential Tenancy Branch