



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL, FFL

Introduction

This was a cross application hearing that dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of property, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's use ("the Notice") issued pursuant to section 49.

The landlord was represented by property manager HL (the landlord). The tenant RW (the tenant) also attended. Each were given an opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses. The landlord disputed receiving some of the tenant's evidence and I excluded this evidence from consideration.

Issues to be Decided

- Is the tenant entitled to an order for the cancellation of the landlord's Notice, pursuant to section 49?
- Is the landlord entitled to an Order of Possession, pursuant to section 55?
- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72?

Background and Evidence

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

The parties agreed that the tenancy started on November 30, 2015, rent is currently \$1,200.00 monthly, due on the first day of the month and the landlord still holds a \$1,200.00 security and pet damage deposit collected at the outset of the tenancy. The tenant continues to reside at the rental property. A copy of the signed written tenancy agreement was provided.

Both parties also agreed the Notice was served in person on December 11, 2019. The effective date of the Notice is February 29, 2020.

A copy of the Notice was provided. The reason to end the tenancy is: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent of child of that individual's spouse)".

The landlord testified the owner of the rental unit and her son want to move in as soon as possible because they moved to British Columbia from another country. The owner did not attend this hearing because she is not able to communicate in English. The landlord produced an email dated January 25, 2020. In this email the owner's son confirms he and his mother want to live in the rental unit.

The tenant testified the rental unit is a foreign investment of the owner. The owner is still overseas and up to 8 international students were living in the upper unit of the house in 2019. At one point one of the students was paying \$1,700.00 per month to rent one bedroom in the upper unit. Since the international students were living unchaperoned there was constant noise and the police were called at least three times by the tenant. On one occasion one of the international students assaulted the tenant. After the tenant's complaints to the Police and the municipality, the international students were going to be charged and they left the house.

The tenant provided copies of the text messages between him and the owner exchanged prior to the Notice being issued. The landlord testified the text messages

produced as evidence were inaccurately translated but did not provide any alternative translation or identify what was incorrect.

One of the text messages provided as evidence, from the tenant to the owner, originally in Chinese and translated to English by the tenant, says:

You allowed [anonymized] to bring in student who spit on me, threatened me physically and waved dead animals in my face. The students and I feel insecure in this house. Your decision and actions have cast a shadow over my health, finances and future prospects. Yes, you decided to hire [anonymized]!

The owner replied to the tenant in text message originally in Chinese and translated to English by the tenant:

Hello! Please find a better place to move soon. I have contacted [anonymized] many times, I am in [anonymized], can not handle these problems, please understand! I don't want to rent out my house anymore. It doesn't give me a better income! But let me feel upset and hate! I have a very high mortgage! And you don't want to pay me rent! Every time you bargain, and deduct my money! I also did not have the peaceful life and the mood in the country! Please move! And I've asked them to move out! Please understand!

The tenant has an ongoing issue with mold in the rental unit and the owner knows she will have to spend money to fix the rental unit, so she wants him to move out.

Analysis

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. Section 49(8) also allows the tenant to challenge the Notice within 15 days. As the Notice was served on December 11, 2019 and the tenant filed on December 20, 2019 the tenant had filed this application in time to dispute the Notice.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states the landlord must demonstrate that they don't plan to occupy the rental unit for at least 6 months and that they have no ulterior motive for issuing the Notice.

The January 25, 2020 email communication provided by the landlord is not as convincing as the text messages provided by the tenant. The email was sent after the hearing for this application was scheduled. The text messages between the tenant and the landlord were sent before the Notice was served and the owner clearly stated she wants the tenant to move out. Furthermore, the landlord says she is overseas and does not mention her intention of moving in.

The landlord states the text messages were inaccurately translated, but did not point any specific mistake in the translation or provide alternative translation. I find the translated texts are clear and coherent.

I find the tenant's testimony and evidence is more credible and supported by the documentary evidence (text messages). I therefore accept the tenant's version that the landlord has an ulterior motive for issuing the Notice and it has not been issued in good faith.

Based on the above, I find that the landlord has not met the onus to prove the owner intends, in good faith, to occupy the rental unit. The Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the *Act*.

As the landlord was not successful, she is not entitled to recover the filing fee.

Conclusion

The Two Month Notice to End Tenancy for Landlord's use is cancelled and of no force or effect.

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: February 25, 2020

Residential Tenancy Branch