



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 landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by counsel.

The parties both disputed that they had been served with the other's materials. The landlord disputed that they were served with the tenant's application or materials and stated they were only made aware of the hearing by a reminder email sent by the Branch. The tenants testified that they had served the landlord with their application by mail.

The tenants disputed that they were served with the landlord's evidence and stated that they had only received an email from the landlord with documents in a file format that was not viewable. The landlord claimed they had personally served the tenants with their materials.

I find that both parties gave weak evidence regarding both service of the respective materials and their denial of having been served by the other party. I note that this is the third hearing regarding this tenancy and both parties are aware of the Rules of Procedure and requirement to serve the other party with their materials. Based on the

testimonies of the parties it is evident that they are aware of one another's position and the materials they are now relying upon consists primarily of evidence that was available at earlier hearings or repeats arguments made earlier.

I find that the inclusion of the parties' evidentiary materials does not cause prejudice to either party and there is no breach of the principles of natural justice or procedural fairness by its consideration. Accordingly, pursuant to section 71 of the *Act* and in consideration of Rule of Procedure 3.17 I find that both parties were sufficiently served with all of the respective materials.

Preliminary Issue – Jurisdiction

There have been at least two previous hearings pertaining to this tenancy under the file numbers on the first page of this decision. The landlord has previously issued a 1 Month Notice to End Tenancy for Cause in April 2018 on the grounds that (1) the Tenant has allowed an unreasonable number of occupants in the unit/site; and, (2) the Tenant has assigned or sublet the rental unit/site without the Landlord's written consent. The tenant disputed the 1 Month Notice and the notice was set aside.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated June 24, 2019. The reason provided for that notice was that the landlord or close family member intended to occupy the rental suite. The tenant disputed the 2 Month Notice and there was decision dated September 6, 2019 setting that notice aside.

The parties agree that the landlord has applied for Judicial Review of the September 6, 2019 decision and that matter is presently before the Supreme Court of British Columbia.

The landlord issued the present 2 Month Notice dated December 21, 2019 for the identical reasons as the earlier June 24, 2019 notice.

The tenant submits that the present application pertains to the same tenancy and a notice to end tenancy issued for the same reasons as the earlier notice and therefore is outside of the jurisdiction of the Branch.

The landlord submits that the present application pertains to a separate and distinct 2 Month Notice and ought to be considered as a separate issue from the matter before the Supreme Court of British Columbia.

Section 58 of the *Act* states the following, in part:

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless...

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

(4) The Supreme Court may

(a) on application, hear a dispute referred to in subsection (2) (a) or (c), and

(b) on hearing the dispute, make any order that the director may make under this Act.

I do not find the landlord's submissions to be persuasive or at all reasonable. The landlord submits that the present notice to end tenancy issued for reasons identical to the earlier notice and supported by affidavits that were prepared for the judicial review is not linked to the matter before the Supreme Court. I find the landlord's argument to be illogical and not at all supported by the facts before me. I find that it is not open for the landlord to issue multiple identical notices to end tenancy and claim that they are each a distinct and unrelated issue.

It is clear that the present Application pertains to the same property that is before the SCBC, involves both parties, and a notice to end tenancy that is identical in all but the date where a decision has already been issued. As such, I find that the present Application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*. Consequently, I find that I have no jurisdiction to consider this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

I note parenthetically that the landlord has issued multiple notices to end tenancy on the same basis and that the present application is an attempt to circumvent procedural steps by issuing a notice to end tenancy identical to one that has been previously cancelled. I find that further issuances of baseless notices to end tenancy may give rise to the right of the tenants to seek a monetary award as against the landlord.

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: March 9, 2020

Residential Tenancy Branch