



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On March 1, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing. T.E. attended the hearing and stated that he was not the owner of the rental unit but attending the hearing as an agent for the Landlord. He stated that the owner of the rental unit stopped employing him as agent at the beginning of March 2020, so it was not clear why he was attending the hearing on behalf of the owner. He stated that he texted the Tenant advising her that he would be out of province, but he never advised her that he was no longer acting as agent for the Landlord. The Tenant advised that she was never made aware by T.E. that he was not the owner of the rental unit nor was she advised that he stopped being the owner's agent. All in attendance provided a solemn affirmation.

The Tenant advised that she served T.E. the Notice of Hearing and evidence package by registered mail on March 13, 2020 (the registered mail tracking number is listed on the first page of this decision). She sent this to the address listed for service on the Notice. T.E. confirmed that this is his address; however, he was out of province and was unable to collect the package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that T.E. was deemed to have received the Tenant's Notice of Hearing and evidence package. However, the Tenant advised that she did not check to see if T.E. could view the digital evidence. As such, I have excluded this evidence and will not consider it when rendering this decision.

T.E. advised that he did not submit any evidence for consideration on this hearing.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on January 1, 2020 for a fixed length of time ending on January 1, 2021. Rent was currently established at \$2,500.00 per month, due on the first day of each month. A security deposit of \$1,250.00 was required to be paid; however, the Tenant still owes \$390.00 for the remaining outstanding security deposit. A copy of the signed tenancy agreement was submitted as documentary evidence.

T.E. advised that the Tenant was served the Notice by posting it to her door on March 1, 2020. The reason T.E. served the Notice is because "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 confirmed that she received the Notice on March 1, 2020 and subsequently made her Application to cancel the Notice. The effective end date of the tenancy was noted as May 1, 2020.

T.E. advised that he believes that the owner of the rental unit and her father want to occupy the rental unit as her father regularly drives to Kelowna for medical treatment. He stated that they live in Vancouver and as this drive is an arduous task, they would like to move there instead and occupy the rental unit. He stated that there was a tenant in the basement unit that was already evicted because of this issue.

The Tenant advised that it was the neighbour that had told her that T.E. was not the owner of the rental unit. She was given the owner's number and when she called the owner, she was advised that the rental unit was for sale and that she must vacate the rental unit by March 2020. In addition, she called the realtor who had signs on the property, and the realtor confirmed that the rental unit is not currently listed for sale but will be once the situation with the tenants is sorted out.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I find it important to note that Policy Guideline # 2A discusses good faith and states that:

"The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised,

the onus is on the landlord to establish they are acting in good faith... Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.”

While T.E. provided testimony with respect to why the Landlord required possession of the rental unit, he submitted insufficient evidence to support his testimony. Based on this scant evidence, I am not satisfied, on a balance of probabilities, that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of March 1, 2020 is cancelled and of no force and effect.

Furthermore, even if an Order of Possession was granted in this scenario, the parties were advised, pursuant to Section 49(2)(iii) of the *Act* that the Notice could not end the tenancy any earlier than the end date of the fixed term in the tenancy agreement.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord’s Use of Property of March 1, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: April 8, 2020

Residential Tenancy Branch