



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on May 12, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

The Landlord was present at the hearing with her son (referred to as the Landlord). The Tenant was present at the hearing with his advocate (referred to as the Tenant). Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Hearing and documentary evidence and did not take issue with the service of these documents.

The Landlord provided some documents for my consideration, but specifically stated he did not serve the Tenant with these documents because he did not know he had to. As stated in the hearing, the Rules of Procedure clearly stated that each party must serve both the residential tenancy branch, and the other party with their evidence, in order for it to be admissible. It does not appear the Landlord even attempted to provide the Tenant with a copy of their evidence. As such, I find the Landlord's documentary evidence is not admissible for this hearing. The Landlord relied on oral testimony only.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on March 1, 2020. The Landlord issued the Notice for the following reason:

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 indicated one of her children would be moving in.

In the hearing, the Landlord was asked to explain why the Notice was issued, and she stated that there is currently 6 people living in the main floor of the house, and they require additional space and want to take over this bachelor suite, which is in the basement. The Landlord explained that she and her husband live upstairs with her son (and his wife), as well as her daughter (and her husband). The Landlord stated that they have 6 adults living in 3 bedrooms, but they only have 1 bathroom for everyone to share, which is a problem. The Landlord stated they want to take over this rental unit mainly so that they can use the extra washroom, and for some extra storage. The Landlord explained that with 6 adults, there simply is not enough room in the washroom for all of them to get ready for work around the same time.

The Landlord further explained that in the last year, her son, and her daughter have both married, and everyone now resides in the house, and they could use some extra room, and another washroom. The son was recently married on February 28, 2020, and the daughter was married last August 2019. The Tenant stated he was unaware of the recent marriages.

The Tenant stated that he does not believe this Notice was issued in good faith. The Tenant explained that he has had a hard time keeping up with his expenses lately, and for the past several months, he has had a hard time finding work. The Tenant stated he borrowed some money from the Landlord last year, and for the past few months, he has been repaying this in small amounts. However, the Tenant stated that on February 27, 2020, he sent the Landlord a text message saying he could not afford to pay off the loan until he found a job. The Tenant provided a copy of this text message. The screen shot of the text message shows that the Tenant sent a series of 3 text messages over

February 27 and 28, 2020, two of which he redacted completely. At the bottom of the screen shot showing these text messages, it says “FAILED”, and also “this message has not been sent.” The Tenant did not speak to this issue, and it is unclear which messages were sent and which were not.

The Landlord stated this eviction has nothing to do with money, and denied that they received this text message prior to issuing the Notice on March 1, 2020.

Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenant. The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because the Tenant is having financial difficulties, not because they actually need the space.

Once the Landlord’s good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that she, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

B. GOOD FAITH

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: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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 and MHPTA or the tenancy agreement.

[...]

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I have considered the testimony and the evidence on this matter, in totality, and I accept that the Tenant has endured some financial hardship over the past year. It appears that the Tenant owed the Landlord some money for an unrelated matter, and has been repaying this debt in small increments over the past several months. This is not disputed. The Tenant feels that, because he got this Notice after he sent the Landlord a text message explaining his financial realities, it suggests that the Landlord is not acting in good faith and may want him out because he is having money troubles.

Having reviewed the screen shot of the text messages the Tenant sent, I note Tenant did not explain why the copy of the text messages he sent shows “failed” and “this message has not been sent” at the bottom of the screen. The Landlord denies that this message was received before they issued the Notice on March 1, 2020. I also note there is not response back from the Landlord via text message, which would indicate receipt of the Tenant’s messages. Having reviewed this matter, I find there is insufficient evidence to show the Landlord received these text messages, or that they played a factor in the issuance of the Notice a couple of days later.

It appears that the Landlord’s daughter was married last summer, and her son got married on February 28, 2020. I accept that having 6 adults reside in the same unit, with one washroom may present challenges, especially in peak periods (getting ready for work). I note the Landlord’s family has undergone significant change in the last year, with two children recently getting married. I note all of these people reside above this rental unit, and I find their explanation as to why they need more space is reasonable, and compelling. I find the Landlord has sufficiently demonstrated their good faith intentions. The Tenant’s application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant’s application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

I note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenant would be entitled to compensation as follows:

Tenant's compensation: section 49 notice

51 (2) *Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

However, this matter would need to be adjudicated after the Landlord has been given a chance to accomplish the stated purpose.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy dated March 1, 2020, is dismissed.

The Landlord is granted an order of possession effective May 31, 2020, at 1pm, after service on the Tenant. If the Tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: May 13, 2020

Residential Tenancy Branch