



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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated June 27, 2020, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 12, 2019, with monthly rent set at \$1,075.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$535.00, which they still hold.

The landlords issued the 2 Month Notice dated June 27, 2020, with an effective move-out date of August 31, 2020 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlords provided the following background for why they had decided to issue the 2 Month Notice. The landlords reside on the property in a 2 bedroom coach house, and rent out two cabins on the property. One cabin is 175 square feet, and the other is 250 square feet. The tenant resides in the larger cabin. The landlords testified that they served the tenant with the 2 Month Notice in order to accommodate the growing needs of the family. The landlords testified that they live in the coach house with their 14 year old son, and had inquired in January with their insurance broker about how their policy would be affected if they were to convert the cabin to personal use instead of using it as rental property. The landlords included the email exchange in their evidentiary materials, which is dated January 27, 2020. The landlords testified that they did not inform the tenant of their plans at the time as they had yet to make a decision about occupying the cabin.

The landlords testified that they decided to follow through with their plan to occupy the cabin after their circumstances had changed due to the pandemic. The landlords testified that the current layout of their home was very open. SF is a full-time university instructor who is now working from home, and requires a quiet space where she can deliver her content and have confidential conversations with students. SF also requires more space for her office, which would include teaching equipment, her work station, as well as resources such as books and files. The landlords testified that they expect that their son would be attending school online for the foreseeable future.

In selecting which cabin to occupy, the landlords testified that they selected the larger cabin as the smaller cabin was minimally winterized, and would require considerable work and expense to upgrade the smaller cabin to suit their needs. The landlords testified that the layout was also better suited for their needs. The landlords requested possession for August 31, 2020, the effective date of the 2 Month Notice, as the school year would be starting shortly.

The tenant is disputing the 2 Month Notice as she does not believe that the landlords issued the 2 Month Notice in good faith. The tenant submitted previous correspondence and warnings from the landlords expressing their concerns about her home based business plans, as well as the allowance of a second occupant in the cabin. The tenant feels that the 2 Month Notice was issued due to the deterioration of the relationship, and not because they required the cabin for their own use. The tenant also questioned the landlords' testimony about why the other cabin was not selected over hers.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."

As the tenant had raised doubt as to the true intent of the landlords in issuing the 2 Month Notice, the burden shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

Although the tenant raised concerns about the landlords' true motive in ending this tenancy, I find the landlords provided detailed evidence to support why they required this specific cabin for their own use. I find the landlords' testimony to be supported by documents, such as the email exchange between them and their insurance broker in January of 2020. I accept their testimony that due to the pandemic, the sense of urgency changed as the circumstances necessitated not only more space, but an appropriate one that would allow the landlords to perform their jobs not only on a temporary basis, but for the foreseeable future. I find that they provided a reasonable explanation for why they needed the tenant's cabin despite the fact that their current living space is almost 1500 square feet, which includes the need for more privacy and separation from the main living space for a home office due to the nature of SF's job requirements. I also accept the landlords' explanation that the tenant's larger cabin was better suited for immediate occupation, especially considering that the school year would be starting shortly. I find that the two cabins on the property are not equal, at least in size, and accept the fact that the landlords prefer the larger one as it better suits their needs.

Although I am sympathetic towards the tenant, and the fact that she would need to find new housing, I find the landlords had provided sufficient evidence to support that they had issued the 2 Month Notice in good faith. Although the tenant believed that the landlords have ulterior motives due to the concerns brought up by the landlords, and what the tenant believes to be a deteriorating relationship, I do not find the tenant's beliefs to be supported in evidence. I find that the landlords had brought up valid concerns in their correspondence with the tenant, and the warnings were issued as part of their obligations as landlords. I do not find the landlords' actions to be retaliatory in nature, and as noted above I find the landlords had provided sufficient evidence to support why they required the tenant's specific cabin for occupancy.

I find that the landlords have met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have met their onus of proof to show that the landlords, in good faith, requires the tenant to permanently vacate the cabin for their own use. Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice dated June 27, 2020. I find that the 2 Month Notice complies with section 52 of the *Act*, which requires that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental

unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 55(1) of the *Act* reads as follows:

55 (1) 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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlords are entitled to an Order of Possession for August 31, 2020. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the cabin by August 31, 2020, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the tenant was not successful with her application, the tenant's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlords' 2 Month Notice to be valid and effective as of August 31, 2020. I issue an Order of Possession to the landlords effective August 31, 2020. The landlords are provided with this Order, and the tenant must be served with this Order in the event that the tenant does not move out by the effective date. 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: August 18, 2020

Residential Tenancy Branch