



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CLN, FFT

Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Tenant under the *Residential Tenancy Act* (the “Act”). The Tenant’s Application for Dispute Resolution was made on July 11, 2020. The Tenant applied to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued July 4, 2020, and to recover their filing fee. The matter was set for a conference call.

The Tenant, the Landlord and the Landlord’s translator attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony 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 to be Decided

- Should the Notice issued July 4, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the Notice was served on July 4, 2020, by personal service. The Notice indicated that the Tenant is required to vacate the rental unit as of August 31, 2020. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that their son would be moving into the rental unit.

The Tenant testified that they believed the Landlord's son would be moving into the rental unit, but that they had disputed the Notice as the Landlord's previous attempt to evict them had failed at hearing.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Landlord served the Notice by personal service on July 4, 2020. Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until July 20, 2020, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on July 11, 2020, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention

with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

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 they do not have an ulterior motive for ending the tenancy.

I have reviewed all of the documentary evidence before me, and I find there is insufficient evidence to prove to me, that the Landlord had issued the Notice with ulterior motives.

In the absence of sufficient evidence, I must accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice issued July 4, 2020.

Pursuant to section 55 of the Act, if a Tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. I have reviewed the Notice, and I find the Notice issued July 4, 2020, is valid and enforceable.

As this notice was issued on July 4, 2020, I find that the earliest date that this tenancy could end, in accordance with the Act, to be September 30, 2020. Pursuant to section 53 of the Act, I find that the effective date of this Notice is automatically changed to September 30, 2020.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on September 30, 2020**. The Tenant must be served with this Order. 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.

Additionally, both parties were informed of their rights and responsibilities pursuant section 51 of the *Act*, regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51 (2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The Tenant's Application to cancel the Notice, issued July 4, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on September 30, 2020**. The Tenant must be served with this Order. 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