



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNL

Introduction

In this dispute, the tenant seeks to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the *Residential Tenancy Act* (the "Act").

The tenant filed an application for dispute resolution on August 7, 2020 and an arbitration hearing was held on September 18, 2020. The tenant, his advocate, the landlord, and two agents for the landlord attended the hearing and were given a full opportunity to be heard, present testimony, and make submissions. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

It should be noted that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, the arbitrator must consider if the landlord is entitled to an order of possession if (1) the application is dismissed and (2) the notice to end tenancy complies with the Act.

Issues

1. Is the tenant entitled to an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

In this dispute, the landlord's agents (hereafter referred to as the "landlord" and used singularly for brevity) testified that they issued the Notice on July 29, 2020 by posting it on, or in, the tenant's door on that date. A copy of the Notice was submitted in evidence.

In explaining the reason for serving the Notice, the landlord testified that there has “been significant changes in the family system” primarily due to the stay-at-home learning and living arrangements that have come about as a result of the pandemic. There are several adults who are living in the upstairs of the property (the rental unit is on the ground level of a house) and for wellness and mental health reasons the family requires the additional space. The family cramped together in the house is, she said, “challenging.” And, with the family children now learning from home, the extra space is required to better facilitate this learning.

The rental unit was described as having two bedrooms and one bathroom, along with other rooms such as a kitchenette. The landlord’s daughter (H.C.) testified that she, her husband, and their baby will move downstairs into the rental unit. She reiterated that while the family all living together was challenging enough, the pandemic has “exasperated everything” and that “now it’s even worse.”

The tenant’s advocate referred me to a previous arbitration decision which dealt with issues of bad faith and the landlord’s purported attempts to end the tenancy for reasons related to rent. (Their position being that the landlord was trying to end the tenancy to obtain a higher rent.) The advocate added, “I don’t what has changed since then.”

Further, the advocate submitted that the tenant has experienced a few instances of the landlord creating an environment which might drive the tenant out. One involved the landlord putting a loud radio up against the tenant’s door, and the other involved the landlord’s making it difficult for the tenant to retrieve his mail.

The landlord disputed this last submission and said that it was “news to us.” They also added that, regarding the rent increase issue from the last dispute, this time it is quite different: the landlord’s family intends to move into the rental unit, which will result in zero rent being earned by the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the ground on which that notice was based.

In this dispute, the Notice was issued pursuant to section 49(3), which states that

A landlord who is an individual 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.

The landlord's daughters testified that one of them, along with their immediate family, will be moving into the rental unit. And, while the tenant's advocate referred me to a previous decision of the Residential Tenancy Branch, and while he commented that he was not sure what has changed since that decision, he did not make submissions regarding the landlord's good faith in issuing the present Notice. Moreover, I find that what has changed (if a comparison between the two points in time is indeed relevant) is that the family is now crammed into a space that, given the family's stay-at-home-and-learning requirements, is simply unworkable.

The tenant's advocate did not call into the landlord's intentions to move part of the family into the rental unit. Finally, there is no evidence before me to find that the landlord has any intention other than to have his daughter and her immediate family occupy the rental. And, no evidence for me to find that such intentions are made with anything but good faith.

For these reasons, and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. Accordingly, I dismiss the tenant's application without leave to reapply and grant the landlord an order of possession under section 55 of the Act.

Section 55(1) of the Act states that

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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

In order to be effective, a notice to end a tenancy 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,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the Notice and find that it complies with section 52 of the Act. Further, given that I have dismissed the tenant's application to cancel the Notice, I therefore grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this Decision, to the landlord.

Conclusion

I dismiss the tenant's application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenant, and which is effective fourteen (14) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 18, 2020

Residential Tenancy Branch