



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL

Introduction

On August 12, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two Month Notice to End Tenancy. On September 6, 2020, the Tenant amended her Application to include a request to cancel a 10 Day Notice to End Tenancy. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issues to be Decided

Should the Two Month Notice to End Tenancy, dated July 27, 2020 (“Two Month Notice”), be cancelled, in accordance with Section 49 of the Act?

Should the 10 Day Notice to End Tenancy, dated September 2, 2020 (“10 Day Notice”), be cancelled, in accordance with Section 46 of the Act?

If either Notice to End Tenancy is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on December 1, 2019. The rent is \$1,475.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$737.50 and a pet damage deposit of \$737.50.

Both parties agreed to the following details of the Two Month Notice:

The Two Month Notice was dated July 27, 2020 and left in the Tenant's mailbox. The move-out date was for September 30, 2020. The reason for the Two Month Notice was stated as the rental unit will be occupied by the Landlord's child.

Both parties agreed to the following details of the 10 Day Notice:

The 10 Day Notice, dated September 2, 2020, was left in the Tenant's mailbox and the Tenant received the 10 Day Notice on September 4, 2020. The reason for the 10 Day Notice was stated as the Tenant failed to pay the rent that was due on September 1, 2020 in the amount of \$1,475.00. The move-out date on the 10 Day Notice was September 11, 2020.

The Tenant testified that the son of the Landlord would not move into the rental unit as there was a silverfish infestation, the windows were loose in their frames and that there was a wiring issue in the rental unit. She stated there were also other options available for the Landlord to move her son, including an empty suite downstairs from the rental unit.

The Tenant acknowledged that she did not pay rent for September 2020 as she expected to be compensated for one month's rent due to the service of the Two Month Notice.

The Landlord stated that her adult son currently lives with the Landlord and is planning to move into the rental unit in October 2020. The Landlord submitted a signed letter from her son that indicated his intention to move into the rental unit.

The Landlord testified that her son preferred to move into the two-bedroom rental unit versus any other potential choice.

The Landlord requested, if the notices are found valid, an Order of Possession as soon as possible.

Analysis

Section 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit if a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(1) of the Act defines “close family member” as the landlord’s parent, spouse or child.

Based on the Landlord’s testimony, I find that the Landlord intends to end this tenancy pursuant to section 49 of the Act; specifically, by having her son occupy the rental unit.

The *Residential Tenancy Policy Guidelines #2* (the “Guidelines”) discusses the legal concept of good faith. The Guidelines refer to *Gichuru v Palmar Properties Ltd*, 2011 BCSC 827 for the suggestion that good faith requires honesty of intention with no ulterior motive.

The Tenant attempted to bring the good faith intent of the Landlord into question by stating that the rental unit required cleaning and repairs and that the Landlord had other potential places for her son to live. As these were the only submissions the Tenant provided, I find that she has failed to provide sufficient evidence to support that the Landlord is intending to act dishonestly or has an ulterior motive.

As such, I dismiss the Tenant’s Application to cancel the Two Month Notice.

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, state the grounds for ending the tenancy; and be in the approved form. I find the Two Month Notice, issued by the Landlord on July 27, 2020, complies with the requirements set out in Section 52.

I have dismissed the Tenant’s Application and found that the Notice is compliant with the Act. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession for the effective date stated on the Two Month Notice, September 30, 2020.

As this tenancy has been ended as a result of the Two Month Notice, I dismiss the Tenant’s Application to cancel the 10 Day Notice.

Section 51(1) of the Act authorizes a tenant who receives a notice to end tenancy under Section 49 to receive one month’s rent from the Landlord. In this case, I find that the Tenant has not and should not have to pay rent for September 2020.

Conclusion

I dismiss the Tenant’s Applications to cancel the Two Month Notice and the 10 Day Notice without leave to reapply.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on September 30, 2020 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: September 28, 2020

Residential Tenancy Branch