



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated July 31, 2020 ("Two Month Notice"); and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he received the Application and the documentary evidence from the Tenant, and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any evidence to the RTB for this proceeding.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, and also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying for RTB dispute resolution. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2018 and ran to May 31, 2019, after which time the Parties confirmed that they signed another one-year tenancy agreement that ran until May 31, 2020. At that time, the Parties decided that the tenancy would run on a periodic or month-to-month basis. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$1,400.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$700.00, which the Landlord still holds, and no pet damage deposit.

The Tenant submitted a copy of the Two Month Notice, which was signed and dated July 31, 2020, which has the rental unit address, and was served in person on July 31, 2020, according to the Landlord's testimony in the hearing. The effective vacancy date on the Two Month Notice is September 30, 2020, and the ground for the eviction is because the rental unit will be occupied by the Landlord or the Landlord's spouse.

The Landlord said that his reason for issuing the Two Month Notice was:

I need this rental suite, because I am having problems with my marriage. I have been sleeping in my office at the end of stairs. There is no kitchen. These are personal issues with my marriage that escalated this summer.

The Tenant said:

At the end of the day, this is a route to evict me; he was not very pleased that he didn't get the increased amount of rent from me. He relied on an outdated tenancy agreement that was null and void. I told him that during Covid, until

December, he can't increase the rent. He didn't give me a 3-month notice for the increase, and it was several times over the allowed amount.

He said that it was due to the extension on this place, but there was no agreement based on that. He made renovations, while I was here, which was quite an inconvenience, with flooding. He is not pleased with fact that there is no increased rent.

On Canada Day, he spent time with his family. His family stayed in the same house, which is very sizeable. I work in the service industry, and the increase is not reasonable – I don't know if I can pay it. See our text messages back and forth. He said that's going to be taken care of in the near further.

You can evict people again [after the Covid state of emergency]. He chose the one he thought could apply. His small office does have a kitchenette and a bathroom, and not a small bed, and they live in a sizeable residence. I mentioned this to the neighbours, and they said [the Landlord] wanted to move his office to my side to have more room for the kids. I think there's plenty of room in his residence already.

The Landlord said:

Yes, my family stayed here on blow up mattresses – there are insufficient facilities to accommodate. . . . She said she has a problem paying the rent. She's renting a 2-bedroom, water front property downtown – it's very expensive. She can find something more affordable.

She has never been in my office, never seen it. I don't have a full kitchen; I have a bar-sized sink and tiny . . . there's no closet. My business rents this place – I have clients coming here - it's not appropriate for me to be living here. They see my clothes. I'm a 50-year-old man. I have lived in situations with half a dozen people throughout life Now I am living under the stairs, and [the Tenant] has a 2-bedroom suite. I need proper living quarters.

I'm quite happy to prove that I'm living in this place, I have no need to rent this out. My full intention is to take over this house for my family.

The Tenant said:

Re too big a space for me? It's not his place to say. He has to be in compliance with the increase allowable by the *Tenancy Act*. I'm coming to question the good faith intent on his behalf. He's arbitrarily evicting me. He says he is going to get another tenant in his text messages. He was going to sign another lease for a 1-year period. If I had signed it, he wouldn't be able to do this.

I was in his suite when they got their dog; I saw his renovations. I also signed my initial lease in his office.

I gave the Parties the chance to make any last statements, starting with the Landlord, who said:

Two things; first, she's talking about my office space. If required to prove the state of my office living quarters, I would be happy to email pictures of the bar stove and sink, my clothes without a closet. . . . I'd be happy to do that.

Secondly, it was my initial intent to renew the [tenancy] agreement. Things changed this summer with my situation and escalated with my wife. [The Tenant] can move out and find another place at a better price.

The Tenant said:

I guess re paying the amount, I've always paid the rent - I can pay the rent, but ability in the future to pay it is in question. I'm back at two of my jobs, one of which is closed.... It was unreasonable to sign the lease at that time; however, it has to fall within the RTB agreement and stipulations. I feel like what he is saying about living spaces is sugar-coated. My space is one third of his upstairs – I think things are blown out of proportion. I don't know what else to add.

I hesitate to say I could find a place easily. I have no family, I ride a bicycle, so moving would be exceptionally stressful. I certainly have stress in my life, as well.

One thing to touch upon, given the late nature, hopefully. . . . If things don't go as I've requested, if I could request an extension – since we're two days from the [effective vacancy date]. I have paid the full amount; I have not taken the free month. I would like to have a reasonable amount of time to try to figure something out.

The Landlord responded:

To be honest, it feels that [the Tenant] has been sneaky with me, and is not being straightforward - delaying things further. If she needs an extra month, I'm okay with that. This is very stressful on my family.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act 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. Section 49 also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

Accordingly, I find that the Landlord has the burden of proving the validity of the Two Month Notice on a balance of probabilities.

I find that the Tenant's focus in the hearing was in part on establishing that the rent increase that the Landlord requested in the Spring was illegal and invalid. However, the issue before me is the validity of the Two Month Notice.

The Tenant also focused on the amount of room that the Landlord has in the residential property, aside from the rental unit. I find that the Tenant implied that the Landlord did not need to have the rental unit vacated for his use. Rather, she implied that the

Landlord is not acting in a good faith basis in issuing the Two Month Notice, as she suggested that he intends to rent it out, if she vacates it.

The Landlord said that he did intend to have the Tenant sign another 1-year lease at the end of their last lease on May 31, 2020. However, he said that since then: "Things changed this summer with my situation and escalated with my wife."

Based on the documentary evidence and testimony before me, and keeping in mind that the burden of proof in this matter is on a balance of probabilities, I find that the Landlord has satisfied me that either he or his close family member(s) intends in good faith to reside in the rental unit. As a result, I am satisfied that the Landlord had cause pursuant to section 49 of the Act to serve the Two Month Notice on the Tenant and to end the tenancy. As a result, I dismiss the Tenant's Application wholly, without leave to reapply.

I also find that the Two Month Notice issued by the Landlord complies with section 52 of the Act, as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the Notice, and the grounds for ending the tenancy, and is in the approved form. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is, therefore, entitled to an Order of Possession effective at 1:00 p.m. on the agreed, extended, effective vacancy date of October 31, 2020.

As the Tenant was unsuccessful in her Application, I decline to grant her recovery of the \$100.00 Application filing fee.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 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. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further to this, in addition to the one month's compensation due to the Tenant under section 51(1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord effective October 31, 2020 at 1:00 p.m. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 29, 2020

Residential Tenancy Branch