



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, LRE, LAT, FFT, OLC, CNL**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

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

As both parties were present service of all materials was confirmed. Based on the testimonies of the parties I find each party served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties agreed that the respondent landlord's name was recorded incorrectly in the original application and consented to amend it to the correct name. The correct name of the respondent landlord is used in the present style of cause.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in January, 2020 between the tenant and the previous owner of the rental property. The monthly rent is \$850.00 payable on the 15th of each month. A security deposit of \$425.00 was collected and is still held by the landlord. The present landlord assumed this tenancy when they purchased the property in August, 2020. The landlord began occupying the property on September 3, 2020. The rental unit is a suite on the main floor of a detached home with the landlord occupying the balance of the property.

The landlord issued a 2 Month Notice dated September 7, 2020 with an end of tenancy date of November 7, 2020. The reason provided on the notice for the tenancy to end is that the landlord or a close family member intends to occupy the rental suite.

The landlord explained that they intend to personally occupy the rental suite. The landlord testified that they have been scheduled to undergo surgery on their knee on November 5, 2020 and expect that having a suite with adjoining washroom on the main floor of the building will be necessary during the recuperation process. The landlord submitted into evidence copies of letters from their physician confirming the scheduled medical procedure. The landlord explained that they have been on the waiting list for their surgery for some time and their surgery date was scheduled and confirmed in August, 2020.

The tenant submits that they disbelieve that the landlord has issued the 2 Month Notice in good faith and submits that there have been other tenancy issues such as provision of internet services, hot water and parking. The tenant submits that the true motivation for the landlord's issuance of the Notice is the other disputes.

Analysis

In order to evict a tenant for landlord's use of the property the landlord has the burden of proving the reasons on the Notice.

The tenant raised the issue of the intention of the landlord and their confidence in the plan the landlord says they have; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that 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.

This Guideline reads in part as follows:

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.

The tenant has raised the good faith intention of the landlord which I find has little merit. I find the landlord's conduct, timeline of events and circumstances to support the landlord's good faith intention to occupy the rental unit with no ulterior motive. I find the issuance of the Notice, shortly after taking possession of the rental property and having surgery scheduled is consistent with their explanation that they intend to occupy the rental unit to facilitate rehabilitation from surgery. I find the copies of correspondence from their physician and their testimony to be sufficient to determine that the landlord is scheduled for surgery which will pose limitations on the landlord's mobility. I accept the

evidence that the landlord intended to occupy the rental unit when purchasing the property and that this is not a capricious decision.

I do not find the tenant's submission that the issuance of the Notice is motivated by other issues to be supported in the materials. While I accept that the tenant communicated some dissatisfaction with their tenancy, I find these issues were either promptly addressed by the landlord or are so minor in nature that it is unreasonable to surmise that they would form the basis of a retaliatory issuance of a Notice to End Tenancy.

I find that the landlord has provided sufficient evidence to support their intended use of the property. I find that the landlord's testimony and documentary evidence demonstrate the good faith intention of the landlord. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed.

Therefore, I dismiss the tenant's application to cancel the landlord's 2 Month Notice.

Section 55(1) of the *Act* reads in part 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..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, as it is in the prescribed form, is signed and dated by the landlord, identifies the address of the rental unit and provides the reason for the tenancy to end.

I note that the effective date identified in the Notice is earlier than the date before the day in the month when rent is payable under the tenancy agreement. Pursuant to section 53 of the *Act*, which provides that incorrect effective dates are automatically changed, I deem the effective date of the Notice to be November 14, 2020, the day before the day in the month when rent is payable.

I issue a formal Order of Possession in the landlord's favour pursuant to section 55. I issue an Order of Possession effective on the corrected effective date of the 2 Month Notice.

As this tenancy is ending, and the tenant provided little submissions or evidence in support of the other portions of their application pertaining to an ongoing tenancy, I dismiss these portions of the application without leave to reapply.

As the tenant was unsuccessful in their application they are not entitled to recover their filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **November 14, 2020**. Should the tenant or any occupant on the premises 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: October 26, 2020

Residential Tenancy Branch