



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL / OPL

Introduction

On September 21, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated August 31, 2020 (the “Two Month Notice”).

On October 2, 2020, the Landlords submitted an Application under the Act. The Landlords requested an Order of Possession for the rental unit. The Landlords’ Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

The Landlords, the Tenant and the Tenant’s advocate (FS) 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. Both parties agreed that they both only submitted the Two Month Notice as evidence.

Preliminary Matter

Twenty-seven minutes into the hearing, I began having difficulty hearing the participants and my audio continued to deteriorate. I had to pause the hearing while I disconnected and reconnected. The hearing was paused for approximately ten minutes and when I returned, all participants were present, and we continued at the point we left off.

Issues to be Decided

Should the Two Month Notice be cancelled, in accordance with Section 49 of the Act?

If the Two Month Notice 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 in September 2017 and there has never been a written tenancy agreement. The rent is \$550.00 and due on the first of each month. The Landlords collected and still hold a security deposit in the amount of \$275.00.

The Landlords provided undisputed evidence that the Two Month Notice was personally served to the Tenant on August 31, 2020 with an effective move-out date of October 31, 2020. The reason stated on the Two Month Notice was that the Landlords intended on moving the mother of the Landlord TL into the rental unit, pursuant to section 49 of the Act.

The Landlord KL testified that they have only had oral agreements with the Tenant about tenancy issues. Landlord KL stated that his mother-in-law currently lives with them and has difficulty navigating stairs. Once the rental unit is vacant, the Landlord will take down a wall which will allow for his mother-in-law to have her own space and access to the main house without having to use stairs.

The Landlord TL testified that her mother is 78 years old and has bad knees. The reason for the end of the tenancy is so her mother can move into the rental unit and have her own space on one level.

The Tenant stated that he has been trying to find a new rental but has been unable to do so. The Tenant stated that the Landlord has asked him to move on two other occasions for other reasons and now has formalized the request. The Tenant asked for more time to find a suitable place to live.

The Tenant's advocate FS testified that the Landlords had asked the Tenant to move on two previous occasions; once when they said their sister was going to move in and a second time when they wanted to do renovations. FS stated that she questioned whether the Landlords were acting in good faith.

The Landlords originally requested a 2-day Order of Possession for the rental unit; however, agreed that if the Tenant paid for the use and occupancy for November 2020, that they would, if granted, accept an Order of Possession for November 30, 2020.

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.

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.

I accept both of the Landlords’ testimony and find that they intend on moving Landlord TL’s mother into the rental unit once it is vacant.

The Tenant attempted to bring the good faith intent of the Landlords into question by relating the Two Month Notice to previous conversations about ending the tenancy, earlier in the year. As this was the only submission the Tenant provided, I find that he has failed to provide sufficient evidence to support that the Landlord is intending to act dishonestly or has an ulterior motive.

In this case, I find that the Two Month Notice was served pursuant to the Act and is valid. As such, the Tenant’s Application is dismissed without leave to reapply. For the above reasons and because the Tenant is still occupying the rental unit, I find that the Landlord is entitled to an Order of Possession.

As discussed during the hearing, the Tenant will owe the Landlords for November 2020 rent, for the use and occupancy of the rental unit. The Tenant will be required to move out of the rental unit on November 30, 2020.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlords an Order of Possession to be effective on November 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: November 17, 2020

Residential Tenancy Branch