



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, OLC, LAT

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 October 1, 2020 ("Two Month Notice"); for a monetary claim of \$9,900.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for an order directing the landlord to comply with the Act, regulation or tenancy agreement; to suspend or restrict the Landlord's right to enter; and for authorization for the Tenant to change the lock.

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. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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.

Residential Tenancy Branch Rule of Procedure 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on his Application, the most urgent of which is the application to set aside a Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the Two Month Notice at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

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 periodic tenancy began on June 1, 2020, with a monthly rent of \$825.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$200, and no pet damage deposit.

The Tenant submitted a copy of the Two Month Notice which contains the following: the Two Month Notice was signed and dated October 1, 2020, it has the rental unit address; however, I do not have the second page of the Two Month Notice before me, and therefore, I cannot tell when it was served or on what bases. The Two Month Notice has an effective vacancy date of December 1, 2020, which is automatically corrected to December 31, 2020, pursuant to section 53 of the Act.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the

reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The Landlord explained the reason why she served the Tenant with the Two Month Notice. She said:

I woke up on September 19 and I suspected I had a stroke overnight, because my right wrist had no function. I went to the hospital and they did CT scans and they determined that I didn't have a stroke, but I had possible nerve damage. They did a nerve conduction study. . . he determined that I have acute nerve damage in my hand.

I need the space downstairs because my ex-husband will be moving in. I can't drive, or do meal prep. I can cook, as long as someone else does the preparation.

He has a separate residence in Coquitlam. We've been separated since 2014. There is a legal separation filed.

The Tenant said:

I knew from the moment she gave it to me - she had a posting on [social media] looking for a new tenant by October 1st. That's why I know 100% that this wasn't done in good faith. I last was on it on September 13, if you're looking for someone for October 1, why get rid of me? I understand why she wants to get rid of me... Every day there's something; I can't live comfortably. Why don't you just move out? But can I find a place with Covid? I got this place with only 2½ weeks to find a place. Now I'm being forced out and not . . . I have auditions, I work, I have to take a break from this to look for apartments. What would work for me? This is time out of my day, my money, and auditions I had to turn down, and I had to find some new place.

The Landlord said:

When [another tenant] told me he was leaving, I did place an ad on market place, and I had a couple people enquire. And since [the Tenant] came back with Covid – he went visiting five different cities and visiting with people – I couldn't rent out [the other tenant's] room. I've counted 18 different people that were posted [on the Tenant's social media account]. I've seen postings on his [social media] – this

is during Covid, when our health officer was saying limit exposure. He came back on September 6, and on September 8 he informed the other tenant that he was Covid positive. On September 8 he was doing laundry and going in the backyard. The contractor walked off the job right then and there. He would not confirm whether he was . . . if [the other tenant] came in the backyard and told us.

I'm evicting him, because he came back with Covid.

The Tenant said:

I would like to respond to the alleged claims. First, I didn't take a vacation. I don't have to explain my personal life, but I booked my first lead role in a film. I went to the east coast to film a movie. Then I went to Montreal, my home town, where I haven't seen people for a year. It was for August when I booked the role, my first lead role, ever. Yes. I posted photos with multiple people. These are my friends. They did not ask people to wear masks with friends. There's no mandate that we are required to wear mask among your friends. Now the rules are different.

Second, I'm not entirely sure why she is suggesting that I went to the Covid store and bought some Covid. I literally did not have symptoms. I had to take a test before going back to work. I only found out the results in the morning, after jogging outside. And [the Landlord] called the cops and said I hadn't been quarantining. Prior to that, I didn't think I had Covid. The only thing I have was blocked ears when I got off the plane.

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 of the Act 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 Two Month Notice is not valid, because the Landlord did not indicate the grounds for the eviction. No one submitted a copy of the second page of the Two Month Notice into evidence, but in the hearing, the Landlord said that she did not know what to put in the grounds section. Further, the Landlord indicated that she could not rent the other room in the rental unit, because the Tenant tested positive for Covid-19. Further, near the end of the hearing, the Landlord said: "Evicting him because he came back with Covid."

Based on the evidence before me, overall, I find that the Landlord issued the Two Month Notice, because she could not rent out the other room, with the Tenant there with Covid. I find this is not a ground of eviction under section 49 of the Act; and therefore, I find that the Two Month Notice is not valid, and I cancel it, pursuant to sections 49 and 62 of the Act. The tenancy continues until ended in compliance with the Act.

Conclusion

The Tenant's Application to cancel the Two Month Notice is successful, as the Landlord did not provide sufficient evidence that she had a valid ground for issuing the notice. The Tenant's other claims are dismissed with leave to reapply.

The Two Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in compliance with the Act.

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: December 24, 2020

Residential Tenancy Branch