



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL, CNL, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on February 5, 2021. Both parties confirmed the landlord served submitted documentary evidence taped to the door. Both parties confirmed the tenant posted her submitted documentary evidence to the door on February 16, 2021.

Both parties confirmed the tenant served her initial application to dispute the landlord's notice to end tenancy issued for landlord's use of property taped to the landlord's door on December 20, 2021 with her submitted documentary evidence. Both parties also confirmed the landlord served her submitted documentary evidence taped to the door on February 10, 2021.

Both parties confirmed the tenant served her secondary application to dispute the landlord's notice to end tenancy issued for unpaid rent taped to the landlord's door on January 24, 2021 with her submitted documentary evidence. Both parties also confirmed the landlord served her submitted documentary evidence taped to the door on February 10, 2021.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 2 month notice?

Is the tenant entitled to an order cancelling the 10 Day Notice?

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on January 1, 2020 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 1, 2019. The monthly rent was \$875.00 payable on the 1st day of each month. A security deposit of \$425.00 was paid on June 21, 2018 from a previous signed tenancy agreement dated June 21, 2018.

Both parties confirmed the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use of property dated November 30, 2020. The tenant disputes the landlord's claim that family will be moving into the rental unit. The tenant stated that there are two rental units and that the other tenant moved out on December 15, 2020, so the landlord could move her family into that unit. The tenant also argued that the landlord had previously tried to evict her for "disturbance" after the tenant had made some complaints about the other tenants.

The landlord confirmed that there were two rental units. One a 2 bedroom unit, the other a 1 bedroom unit which is not permitted/authorized. The landlord stated that the 2

bedroom unit was re-rented and the one bedroom unit would be occupied and used for personal use. The landlord stated that financially the two bedroom unit would yield more rent compared to the one bedroom unit and was re-rented. The landlord also stated that the one bedroom unit not permitted/authorized was reported to the local municipality by the tenant as unauthorized. The landlord stated that a letter from the local municipal bylaw office requires them to end the tenancy for the one bedroom unit. The landlord stated that she intends to use the space to allow her autistic son to have his speech therapy lessons in a private space away from the family living area.

The tenant has argued that the landlord had issued the wrong notice to end tenancy for non-residential use. The tenant also disputes the landlord's reason to use the space for her son's speech therapy lessons.

On the remaining two applications filed, the landlord seeks an order of possession and a monetary claim for unpaid rent. The tenant seeks an order cancelling the 10 Day Notice.

On this matter, both parties confirmed the landlord served the tenant with a 10 Day Notice dated January 20, 2021 for unpaid rent. Both parties confirmed the 10 Day Notice states that the tenant failed to pay rent of \$875.00 that was due on January 1, 2021 and that it provides for an effective end of tenancy date of January 30, 2021.

The landlord stated that the tenant failed to pay January 2021 rent of \$875.00 when it was due on January 1, 2021. The tenant confirmed in her direct testimony that she did not pay the rent. The tenant stated that she was worried that the landlord would not allow her compensation of 1 months rent regarding the two months notice. The tenant was asked why she would receive compensation of one months rent if she was disputing the landlord's two month notice. The tenant was advised that there would be no compensation if her application to cancel the two month notice was successful and that she is only entitled to the one months compensation if she complied with the two month notice. The tenant provided no answer.

The landlord also stated that since the 10 Day Notice dated January 20, 2021 was issued, the tenant has not paid any rent for February 2021.

Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy

the rental unit. It also states that a tenant who applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case both parties confirmed that the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use dated November 30, 2020. The landlord has provided affirmed testimony that the rental space was being reclaimed for use family use for her autistic son to have his speech therapy lessons in private. Despite the tenant dispute this reason for ending the tenancy, the tenant has not provided any evidence that the landlord's reason is in question or fraudulent.

The tenant has argued that Residential Policy Guideline 2A, Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member will not be using it for that stated purpose. The tenant has stated that the landlord had previously attempted to evict her for "disturbance" without success. I take note of this but find that the landlord has provided a logical and reasonable explanation for this 2 month notice issued. Both parties confirmed that there are two rental unit, one a two bedroom permitted unit and a second one bedroom unpermitted. Both parties confirmed the tenant reported the unpermitted one bedroom to the local municipal bylaw office which as required the landlord to return it to a non-rental unit. Residential Tenancy Branch Policy Guideline, Reclaiming a rental unit as living space states in part,

*If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), **the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation.** For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.*

On this basis, I find that the landlord has provided sufficient evidence to satisfy me that the 2 month notice dated November 30, 2020 is valid. The tenant's request to cancel the 2 month notice is dismissed. The landlord is granted an order of possession to be effective two days after service upon the tenant.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

On the matter of the 10 Day Notice dated January 20, 2021, I find that the landlord has established a claim for unpaid rent of \$875.00 for January 2021. The tenant confirmed in her direct testimony that no rent was paid. As such, the 10 Day Notice dated January 20, 2021 is upheld. The tenant's request to cancel the 10 Day Notice is dismissed. The landlord is also granted an order of possession to be effective 2 days after it is served upon the tenant.

I note for the record that as this decision was issued on March 1, 2021, the issue of unpaid rent may continue for March 2021. However, that unpaid rent was not dealt with during the hearing. If the tenant resides in the rental unit beyond March 1, 2021 prior to both parties receiving this decision, the landlord is at liberty to file an application for unpaid/loss of rent for March 2021 against the tenant.

I find based upon the undisputed evidence of both parties that the landlord has established a monetary claim of \$1,750.00 for unpaid rent for January and February of 2021 at \$875.00 per month.

The landlord having been successful in her application is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant for both the 2Month Notice and the 10 Day Notice.

The landlord is granted a monetary order of \$1,850.00 for unpaid rent.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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: March 1, 2021