



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, DRI, OLC, FFT, OPL, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On December 17, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit pursuant to Section 49.1 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking to dispute a rent increase pursuant to Section 41 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 10, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) pursuant to Section 49 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with S.L. attending as his witness. The Landlord attended the hearing as well, with H.B. and B.R. attending as witnesses for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing package by registered mail on December 28, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package.

The Landlord advised that he served the Tenant the Notice of Hearing and evidence package by registered mail on February 21, 2021 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served with the Notice of Hearing and evidence package. As such, I am also satisfied that the Tenant was served with the Landlord’s evidence. Thus, this evidence was accepted and considered when rendering this Decision.

The Tenant advised that he served the Landlord his evidence by registered mail on March 3, 2021; however, the Landlord stated that he did not receive this evidence. As this evidence was not served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that his other claims would be dismissed, and that he is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2015 as a month-to-month tenancy. Rent was established at \$1,037.50 per month and was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Both parties also agreed that the Notice was served by registered mail on or around December 15, 2020. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)" and that "The father or mother of the landlord or landlord's spouse" will occupy the rental unit. The effective end date of the tenancy was listed on the Notice as February 28, 2021.

While the Tenant disputed a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, as all parties agreed that this was not a subsidized housing unit, I am satisfied that this was made in error. As such, this Decision will proceed based on the dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Landlord advised that his mother has lived with him for the past 11 years and his house has 14 stairs. However, due to her declining health and mobility issues, she can no longer live at his house. He would like his mother to move into the rental unit as there are no stairs. He also stated that his mother is integrated in the community where the rental unit is located. Finally, he indicated that there are personality differences between his mother and his wife, and this would be another reason for his mother to move into the rental unit.

B.B. advised that she suffers from COPD, that she has had two knee surgeries, and that her health is deteriorating. As such, she can no longer manage the 14 stairs in her current residence.

S.L. advised that it is her opinion that this Notice was served in bad faith because of ongoing issues caused by the Landlord. She stated that he has been threatening to evict the Tenant for months, that he is aggressive and abusive, and that when he comes onto the property, he is intoxicated. She cited several instances of interactions and disputes that they have had with the Landlord which supports her position that the Landlord will not be using the property for the stated purpose. However, she contradictorily stated later that she believes the Landlord's mother will move in, but maybe not for a long period of time. Finally, she submitted that the Landlord owns several other properties and she questioned why he would serve the Notice now, for this rental unit, given that his mother has lived with him for over 10 years already.

The Tenant advised that the Landlord's mother has lived with him for 10 years and that they have already made that lifestyle choice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord has provided testimony and submitted documentary evidence corroborating that his mother is suffering from declining health and mobility, and that the place she is currently living in has too many stairs for her to navigate. Thus, she needs to occupy the rental unit once vacant as it has no stairs. Furthermore, the Landlord's mother has provided solemnly affirmed testimony to corroborate her deteriorating health and her need to live in the rental unit.

While I find it important to note that the rental unit is a basement and would likely have some stairs, I accept on a balance of probabilities that it has considerably less stairs than the residence she is currently residing in. Furthermore, I accept that reduced mobility is a natural result of aging and that the Landlord's mother's mobility is an ongoing challenge.

While the Tenant has provided submissions that primarily just amounted to speculation about the Landlord's intention to evict them, I do not find that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice. As such, I am satisfied that the Landlord has substantiated that he intends to use the rental unit for the stated purpose and as such, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on or around December 15, 2020 complies with the requirements set out in Section 52, I uphold the Notice and I dismiss the Tenant's Application. In addition, I find that the Landlord is entitled to an Order of Possession that is effective **at 1:00 PM on March 31, 2021 after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Both parties were reminded of the one-month compensation requirement that is associated with serving this Notice. As well, both parties were reminded of the 12-month compensation requirement should the Landlord not use the property for the stated purpose.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **at 1:00 PM on March 31, 2021 after service of this Order** on the Tenant. 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: March 15, 2021

Residential Tenancy Branch