



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's two applications for dispute resolution (application) under the Residential Tenancy Act (Act) for:

- an order cancelling the two (2) Two Month Notices to End Tenancy for Landlord's Use of Property (Notice) issued by the landlord; and
- recovery of the filing fee.

The tenant, her legal counsel (counsel) and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notices?

If so, is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

This tenancy began on March 1, 2020, as per the written tenancy agreement, for a fixed term ending on February 28, 2021, monthly rent was \$2,200, due on the first day of the month and the tenant paid the landlord a security deposit and pet damage deposit of \$1,100 each. Filed in evidence was a signed written tenancy agreement.

The evidence shows that the landlord issued the tenant two separate Notices, one dated January 30, 2021, for an effective move-out date of March 31, 2021, and another one dated March 5, 2021, for an effective move-out date of May 31, 2021. Filed in evidence were copies of both Notices.

Both Notices listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or spouse.

The landlord submitted that the Notices were issued by email and registered mail. Through her applications, the tenant confirmed that she received the first Notice on January 31, 2021, and the second Notice on March 6, 2021. Both tenant applications were filed within the 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord submitted that he issued the tenant the Notices because he lost his job in another city and province and moved back to the local area. The landlord said he cannot rent an apartment himself because he lost his job and has no income.

The landlord said he has moved into his sister's apartment, and there are a total of six people in a two-bedroom apartment, including his parents.

The landlord said that he is divorced and he cannot have his children come to stay with him due to lack of space. The landlord said he feels like a homeless person as he cannot move back into his home where the tenant lives.

Evidence filed by the landlord included email communication between the tenant's Counsel and the landlord's agent, discussing the Notices, email communication between the landlord and tenant, and an email from the landlord's former employer, dated January 22, 2021.

The landlord submitted that he issued the tenant two separate Notices due to believing the first Notice contained an invalid move-out date, due to the date of service.

Cross-examination by tenant's counsel –

The landlord was asked if he had changed his address on his driver's licence and the tenant said no. The landlord said he has put in a change of address with Canada Post.

The landlord was asked if he provided a change of address for this dispute and the landlord said no.

Counsel's examination of tenant –

Counsel asked the tenant if in and around the time the landlord's email was sent to the tenant, if he said he would increase the monthly rent to \$2,500 or he would find other tenants. The tenant said yes.

Counsel's arguments –

Counsel submitted the landlord did not issue the Notices because he wanted to move into the rental unit, but rather, he wanted to repair and renovate the property. Counsel submitted that the landlord had several issues with the tenant and the only way he could end the tenancy was by serving the Notices, and did not have a genuine intention to move into the residential property.

Counsel asserts that when the tenant refused to sign another tenancy agreement, the landlord said in an email of January 12, 2021, that he wanted the property vacated to do renovations.

Filed in evidence are copies of the signed written tenancy agreement, for the start of the tenancy, and the unsigned tenancy agreement, for a tenancy beginning after the end of the original fixed term, for the same monthly rent, and January 12, 2021 emails from the landlord to the tenant.

Analysis

Based upon a review of the relevant oral and written evidence and on the balance of probabilities, I find the following:

Section 49(3) of the Act stipulates 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, close family member defined as mother, father, or child.

In considering whether the landlord has acted in good faith, argued here, a two-part test is imposed, namely, that the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy and that the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

As to the Notice, in the circumstances before me, I find that the landlord has submitted sufficient evidence that he intends to occupy the rental unit for his own use. The landlord submitted an email from his employer, dated January 22, 2021, noting that the landlord's last day at the company was January 29, 2021.

The landlord said he has moved back to the area and is living with five other family members, in a two-bedroom apartment. I find the tenant has not proven otherwise. I placed little weight on the landlord not having changed the address on his driver's licence to date, as it is reasonable to conclude he would do so when he has vacant possession of the residential property or another permanent address.

I accept the landlord's statement that he has no other home to go to and cannot find a rental himself, without employment.

I find overall the evidence shows on a balance of probabilities that the landlord's circumstances have changed with a job loss and that he intends to occupy the rental unit.

Further, after hearing the evidence of both parties, I cannot find that the landlord acted dishonestly or had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I have read the January 12, 2021, email from the landlord to the tenant and do not find that it proves the landlord wants occupancy of the rental unit to make repairs. My interpretation of the email informed the tenant that he was not going to continue to make repairs to the exterior of the rental unit, due to the difficulty of working with contractors' schedules when having to issue notices of entry. In that email, the landlord added that the tenant could stay there and sign the new tenancy agreement, for the same monthly rent, with the house being in an as-is condition. I find this shows the landlord at that time had no intention on ending the tenancy; however, afterwards, his circumstances changed.

That email predated the email from the landlord's employer, informing him of his last day on the job, or January 29, 2021. The first Notice served to the tenant was January 30, 2021.

Once back in the property, the landlord is allowed to make repairs if they so chose for their own purpose after moving in.

The evidence also shows the landlord informed the tenant he lost his job and needed to move back into the property.

I therefore find that, upon a balance of probabilities, the landlord has met their burden of proving the rental unit will be used for the stated purpose listed on the Notice and that the Notice was issued in good faith. I therefore find the Notice is valid and enforceable.

As such, I dismiss both the tenant's applications seeking cancellation of the Notices, without leave to reapply. I dismiss the tenant's request for recovery of the filing fee.

I find that the landlord is entitled to and I grant an order of possession for the rental unit effective on the move-out date on the second Notice, or May 31, 2021, pursuant to section 55(1)(b) of the Act.

Should the tenant fail to vacate the rental unit by 1:00 p.m., May 31, 2021, the order must be served to the tenant and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

The landlord and the tenant are hereby advised of the provisions of section 51(1) of the Act, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the Act is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord and the tenant are hereby informed of Section 51(2) of Act, which provides that if the landlord has not taken steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an additional equivalent of twelve months' rent.

Conclusion

For the reasons stated above, the tenant's two applications are dismissed.

The landlord has been issued an order of possession for the rental unit, effective at 1:00 p.m. on May 31, 2021.

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: May 20, 2021

Residential Tenancy Branch