



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on March 11, 2021 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek the landlord’s compliance with the legislation and/or the tenancy agreement. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 21, 2021.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. On the basis that both parties received full disclosure from the other, I proceeded with the hearing.

Preliminary Matters

At the outset of the hearing, on my prompt the parties provided confirmation of the current rent amount paid by the tenant. There was a rent increase in 2020 after the landlord notified the tenant of this on March 14, 2020. The rent increase was effective on July 1, 2020. The landlord provided they were not sure if the rent increase was allowed; however, the tenant acknowledged they agreed to this.

There was a moratorium on rent increases by landlords in BC due to public health restrictions. I informed both parties in the hearing that the legality of the rent increase in this tenancy is not at issue in this hearing. Should the parties wish to resolve this issue, they have either the avenue of mutual agreement of a refund should they determine this rent increase happened despite restrictions; alternatively, a monetary claim can be resolved through a separate dispute resolution application.

In the hearing, the tenant stated they would like to apply for a reimbursement of the Application filing fee. The *Residential Tenancy Branch Rules of Procedure* Rule 4.2 allows for an amendment to the Application in the hearing. In line with this, I allow for the amendment, and the award for reimbursement of the Application filing fee is thus contingent on the tenant's success in making their claim.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Two Month Notice?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the landlord obligated to comply with the *Act*, the regulations and/or the tenancy agreement, pursuant to s. 62 of the *Act*?

Background and Evidence

I have reviewed the evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement. The parties signed the agreement on September 16, 2018 for the tenancy that began on October 1, 2018. The rent was set at \$1,300, and this increased to \$1,333.80 in 2020.

The landlord issued this Two-Month Notice on February 28, 2021. Both parties provided a copy of this document in their evidence. It provides the move-out end-of-tenancy date as April 30, 2021. The tenant in the hearing provided that they did not move out on this date and have paid rent on time for each subsequent month through to June 2021.

Page 2 of the document shows the landlord's indication that "The rental unit will be occupied by the landlord or the landlord's close family member . . .". They gave the additional detail that the landlord or the landlord's spouse will occupy the unit.

The tenant provided a copy of the message from the landlord dated February 24, 2021. The landlord described having a conversation with the tenant casually and letting them know that they would be moving forward on ending the tenancy for their use of the rental unit. This document followed that conversation. It sets out two options: either a Two-Month Notice, with the second month being “considered free rent”; or a mutual agreement to end the tenancy. The second option would require more discussion on a tenancy end date. The landlord requested the tenant’s choice by February 27, 2021.

In the hearing the landlord provided that they have the need to use the rental unit for their family, with two kids needing separate rooms. They provided pictures that show their current living arrangement that they submit is narrow and crowded. There would be an extra bedroom available as well as space that can be used as an office. They started with these considerations in 2020.

They communicated to the tenant the two options outlined above. The tenant did not respond initially, and then left vague information that they would move out toward July 2021. They stated the process was more “open-ended” at the start; however, their “hands were tied” when the tenant would not give further information about moving out. With this hearing being 3 or 4 months after the initial service of the Two-Month Notice, the tenant has had more than enough time to make other living arrangements.

In the hearing, the tenant presented that their messaging to the landlord was: “I can try my best”. Their ability to move out was dependent on their employment situation – in order to secure future employment, a potential employer would not look favourably on them if their tenancy was thought to be in jeopardy. As well, they pleaded that they will be homeless if the tenancy ends.

The tenant drew upon the other relief they applied for in this hearing, that of the landlord’s compliance with the tenant’s right to quiet enjoyment. The tenant acknowledged their complaints and queries to the landlord in the past and stated that here the landlord was “ignoring their obligation to [the tenant] by just trying to remove [the tenant] from the rental unit.”

The tenant provided evidence in the form of a transcript of their messages to/from the landlord about their issues with noise emanating from the landlord’s own unit above. These are from 2018 through to May 2021. This started approximately 3 weeks after the start of the tenancy. The bedroom they use is directly below the landlord’s upstairs kitchen and between 10:00pm and 8:00am they were woken up on many occasions. There are queries from the tenant on other sources of noise that disturbed their sleep.

In response, the landlord acknowledged how it could be perceived that the Two-Month Notice was a form of retaliation; however, they made this decision after a long process of consideration that goes back to 2020, and ending the tenancy is not intended to be a retaliation to the tenant's complaints here.

The landlord provided screenshots of the messaging with the tenant from the same timeframe around the start of the tenancy. Additionally, they provided images of tenancy postings online, to show that the tenant's claim of homelessness should the tenancy end is unfounded, with a lot of availability for rental units in the immediate area.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The *Act* s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant's Application or uphold the landlord's notice.

In this matter, the landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the landlord has met the burden to show they issued the Two-Month Notice in good faith. The tenant did not provide sufficient evidence to show otherwise.

I find there is sufficient evidence to show the landlord's own need for the rental unit. This includes actual needs for space, and I find these needs are legitimate. In sum, the landlord is not prevented from ending the tenancy for this reason.

The tenant loosely provided this is a situation of bad faith with the landlord not willing to deal with the tenant's own complaints. The text messages provided by both parties here show a pattern of communication where the landlord is often responding to the tenant's queries on noise emanating from the upstairs unit which is that of the landlord. On my review of all the messages, there are suggestions from the landlord that the tenant would be more comfortable in a different tenancy situation; however, nowhere is this revealed to be a demand from the landlord, nor is there any messaging that shows the landlord intended at any point to end the tenancy for this reason.

The tenant did not provide testimony or other evidence to show there was any communication with the landlord that undermines the landlord's stated intention on their need for the unit. Some messages reveal the landlord's request to the tenant to cease messaging every time sleep is difficult; however, this is not expressed in terms of anger or stating any ultimatum in regard to the status of the tenancy.

There is no evidence from the tenant that outweighs that of the landlord regarding the landlord's stated intention. There is no information that runs counter to the landlord's description of their early thoughts about their need for the rental unit in 2020. There is no evidence to show the landlord made other indications to the tenant regarding the need for the rental unit. Without such evidence of conflicting messages or other communication, there are no indications that show the issuance of the Two-Month Notice was done in bad faith.

For these reasons, I uphold the Two-Month Notice issued on February 28, 2021 and find it was issued in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the landlord is entitled to an order of possession on the effective date.

The tenancy shall end with service of the Order of Possession. In line with this, I make no order for the landlord's compliance with the *Act* and/or the tenancy agreement concerning the tenant's right to quiet enjoyment.

Because the tenant is not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the tenant's Application, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. The landlord must serve this Order of Possession on the tenant. Should the tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 21, 2021

Residential Tenancy Branch