



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

Introduction

On July 24, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on August 12, 2021 and the Landlord confirmed that he received 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 the Tenant's Notice of Hearing and evidence package. As this evidence has been received in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties acknowledged the evidence submitted and 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?

Background, Evidence, and Analysis

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 June 19, 2016 and that the tenancy was currently a month-to-month tenancy. Rent was presently established at \$1,000.00 per month and was due on the 19th day of each month, according to the tenancy agreement. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant was served the Notice by it being posted to his door on July 11, 2021. 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)." As well, the Landlord checked off the box that the rental unit will be occupied by "The father or mother of the landlord or the landlord's spouse." The effective end date of the tenancy was noted as September 20, 2021.

The Landlord advised that he lives above the Tenant and the area that he lives in has three bedrooms. He occupies one bedroom, his daughter occupies another, and his parents live in the third bedroom. He stated that his grandfather has been alternating staying there, and with his aunt, every two weeks but is tired of moving back and forth. So, his grandfather told him in July 2021 that he would like to move in. As his grandfather wants a separate washroom, the basement would be ideal.

When his testimony that his grandfather would be moving into the basement was confirmed, he then contradictorily advised that his grandfather cannot live on his own in the basement and that his parents would be the ones moving into the basement. He also stated that one of the rooms in the basement could be used for his daughter's toys.

The Tenant advised that he received a text from the Landlord in April 2021 about increasing the rent. He informed the Landlord that rent was currently frozen and that rent increases were not permitted; however, the Landlord told him that that information only pertained to commercial tenancies. When the Tenant sent him information from the Residential Tenancy Branch website confirming that rent increases were not permitted, the Landlord stopped attempting to implement one. He referenced documentary evidence to support this position.

He also stated that in May 2021, the Landlord accused the Tenant, or a guest of the Tenant, of smoking on the property which has never happened. After these incidents, the Landlord then served the Notice. He submitted that there was never any talk of the Landlord's grandfather, or parents, moving into the rental unit. It is his belief that this Notice was not served in good faith as the Landlord is looking to re-rent the unit for a higher amount of rent.

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. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

"The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant."

When reviewing the evidence and submissions before me, I note that the Landlord initially provided the reason why the Notice was served as being for his grandfather to occupy the rental unit. He then contradicted himself and stated that the rental unit was to be occupied by his parents. I also find it important to note that a series of text message conversations, that were submitted as documentary evidence, demonstrated that sometime before July 11, 2021, the Landlord texted the following message to the Tenant, "I give you 31 days notice,vacant [sic] my basement." When the Tenant replied,

“On what basis?”, the Landlord then responded with, “Just want my basement for myself I don’t need any basis to ask renter to leave.”

When reviewing this text message exchange in conjunction with the Landlord’s contradictory testimony, I find that these inconsistencies cause me to question the Landlord’s credibility on the whole. When weighing the totality of the evidence and submissions before me, I am doubtful that the Notice was served in good faith. I find it more likely than not that the Landlord’s reasons above were created to disguise an ulterior motive for serving the Notice.

Ultimately, based on the doubts raised, I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of July 11, 2021 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month’s rent in satisfaction of this claim.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord’s Use of Property of July 11, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: October 7, 2021

Residential Tenancy Branch