



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, RP

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, erroneously dated November 27, 2021 (the Two Month Notice);
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided; and
- an order for repairs made to the unit, having contacted the Landlords in writing.

Procedural History

This hearing was reconvened after it was adjourned on November 26, 2021. This decision should be read in conjunction with the Interim Decision issued on December 9, 2021.

The Interim Decision and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties, at the emails addresses they provided to the Residential Tenancy Branch.

In each hearing, the parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Service of Documents

In the November 26, 2021 hearing, the Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) on the Landlords by registered mail and email on October 28, 2021. The Tenant testified they served their evidence on the Landlords by registered mail and email on November 5, 2021. The Landlords confirmed receipt of the Tenant's documents.

The Tenant testified they served their November 5, 2021 amendment and related evidence on the Landlord by registered mail on November 5, 2021, and by email on November 6, 2021. The Landlords testified they did not receive the Tenant's amendment.

The Landlords testified they served their responsive evidence on the Tenant in person on November 18, 2021. The Tenant confirmed they received the Landlords' evidence.

In the January 11, 2021 hearing, the Tenant provided the Canada Post tracking number for the amendment and evidence sent by registered mail on November 5, 2021. The Tenant testified the package was sent to the Landlords' address for service on the Two Month Notice. During the hearing, I looked up the tracking number on the Canada Post website, and confirmed that the package was received by Canada Post on November 5, 2021 and delivered on November 10, 2021.

I find the Tenant served the NDRP, amendment, and their evidence on the Landlords in accordance with section 89 of the Act.

I find the Landlords served their evidence on the Tenant in accordance with section 88 of the Act.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss the Tenant's application for an order to reduce rent for repairs, services, or

facilities agreed upon but not provided; and an order for repairs made to the unit, having contacted the Landlords in writing.

The remainder of this decision will contemplate the Tenant's application for an order to cancel the Two Month Notice.

Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the Two Month Notice?
- 2) If not, are the Landlords entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on August 1, 2019; rent is \$850.00, due on the first of the month; and the Tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00, which the Landlords still hold.

A copy of the Two Month Notice was submitted as evidence. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent of child of that individual's spouse). The Two Month Notice indicates it was signed on November 27, 2021; the Landlords confirmed that was an error, and that the Notice was signed on October 27, 2021.

The Landlord testified they served the Two Month Notice on the Tenant in person on October 29, 2021. The Tenant testified they received the Two Month Notice as described.

Landlord KG testified that he is awaiting surgery on his neck, and that he is on call for emergency surgery which could happen at any time. KG testified that following the surgery, he will be in a rehabilitation centre for six months to a year. KG testified that the person moving into the rental unit is NK, the son of Landlord PK, and is one of the shareholders of the company. KG testified that they need a two-bedroom unit for NK, as NK will be managing the property in KG's absence. KG testified that the Tenant's unit provides a view of the whole building, which is why the Landlords wish to use it for NK. KG testified they need to get NK into the unit as soon as possible, so that he can take over from KG when KG gets the call for his procedure.

KG testified that they notified the Tenant in October that they would be needing the unit, that "it is nothing personal," and that there is no other reason why they have served the Tenant with the Two Month Notice.

When asked if there are any other comparable vacant units available, the Landlords testified that there was no two-bedroom unit available.

The Tenant submitted that a unit in the building is becoming available at the end of January; the Landlords testified that is a three-bedroom unit.

The Tenant testified they did not recall the Landlords indicating this was the reason they required the rental unit.

The Tenant asked PK if his son, NK, was giving up any significant obligations in assuming this new position. PK submitted that NK already works for the property company.

The Tenant testified that she has made repeated requests for repairs to be done, and that the Landlords have served the Two Month Notice to avoid their obligation to repair and maintain the rental unit.

The Tenant asked PK where his son, NK, lives. PK testified that NK lives in Vancouver, and stays with PK when he visits. PK testified that he has three children, all of who work for the property company.

The Tenant observed that to take over managing the property, NK will be moving far from Vancouver. The Tenant asked PK if NK has any experience in property management. PK testified that NK is already a property manager, and has worked in the field since he was 16 years old.

The Tenant testified that she feels like she is "being railroaded" because of the long conflict with the Landlords over repairs, and that the Landlords are bringing NK in "as a last ditch effort" to get her out of the rental unit. The Tenant testified she was not aware that KG required surgery or that he would be away.

The Tenant submitted as evidence a written statement noting she has made written repair requests to the Landlords on the following dates:

- October 1, 2020;

- November 3, 2020;
- August 26, 2021; and
- October 27, 2021.

The Tenant's statement acknowledges that some repairs have been done, but notes that a Property Condition Inspection Report, received November 4, 2021, lists the following five priorities with respect to the Tenant's safety:

- Drywall repairs due to cracking;
- A new roof needed due to leaking;
- Flooring to be replaced due to sloping;
- A new furnace to be installed as it is 14 years past its useable life; and
- Remove Styrofoam from basement – if it catches fire it will release deadly gas.

In her written statement, the Tenant submits: "The condition of the unit has continued to deteriorate, hence my most recent letter of 27 October, 2021. Instead of agreeing to the repairs, the landlord has retaliated by issuing me a 2 Month NTE for LL's Use of Property, claiming the property manager's son is moving in. In short, the landlord is doing her best to displace me, instead of doing the right thing."

Analysis

I find the Landlord served the Two Month Notice on the Tenant in person on October 29, 2021, and in accordance with section 88 of the Act. I find the Two Month Notice meets the form and content requirements of section 52 of the Act. While I note the Notice incorrectly indicates it was signed in November, not October 2021, the Tenant did not query this in the hearing as a point of confusion, and page 4 of the Two Month Notice states that an error in the Notice does not make it invalid.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A identifies scenarios that may suggest a landlord is not acting in good faith, including the attempt to avoid obligations under the Act related to repairs. The Guideline also identifies the availability of comparable suites and a history of the

landlord ending tenancies to occupy a rental unit without following through on occupation, as possible indicators of an ulterior motive for ending the tenancy for landlord occupancy.

While I accept the Tenant's written submissions and verbal testimony that they have had significant difficulty getting the Landlords to complete all of their requested repairs, I also find credible the Landlords' affirmed testimony that KG is in need of a medical procedure, necessitating someone to fill his role of property manager for an estimated minimum of six months. I accept the affirmed testimony of the Landlords that PK's son, NK, is already an experienced property manager, and requires a two-bedroom unit to move into. I accept the affirmed testimony of the Landlords that the Tenant's two-bedroom unit provides optimal visibility of the property, and that there are no other comparable units currently available.

The Two Month Notice is upheld. The Landlords are entitled to an order of possession in accordance with section 55 of the Act.

As in the hearing the Tenant raised the question of whether or not the Landlords truly intend for the landlord's son to occupy the rental unit for six months after the tenant vacates, I bring the attention of the parties to section 51(2) of the Act, which provides a consequence for landlords who do not meet the stated purpose for ending the tenancy:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Conclusion

The Tenant's application is dismissed.

The Two Month Notice is upheld.

The Landlord is granted an order of possession, which will be effective February 28, 2022, at 1:00 p.m.

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: January 27, 2022

Residential Tenancy Branch