



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property (the "Two Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

No issues were raised with respect to the service of respective evidence submissions on file. The landlord did raise an issue with respect to the timeliness of the tenant's application. The landlord referred to the Notice of Hearing which indicates the application was submitted on March 31, 2022. The landlord submits this is 7 days outside the timelines to file permitted under the Act. I have reviewed the application filing date and unfortunately the system generated Notice does not accurately reflect the date filed. The application was filed and a payment was received from the tenant on March 9, 2022 which is within the timelines permitted under the Act.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the Landlord be ordered to comply with the Act?

Is the tenant entitled to recover the filing fee?

Background & Evidence

The rental unit is a two-bedroom condo. The tenancy began April 1, 2019 and the current rent is \$1300.00 per month. The landlord just recently purchased the unit as an investment property. The purchase completion date was March 1, 2022.

The landlord served the tenant with a Two Month Notice on March 9, 2022. The Two Month Notice has an effective date of May 31, 2022. The ground for issuing the Two Month Notice is the landlord daughter intends to occupy the rental unit.

The landlord testified that shortly after purchasing the property she contacted the Residential Tenancy Branch in regard to increasing the rent. The landlord testified she was advised she could file an application for an Additional Rent Increase under the Act but was also advised to first attempt to negotiate a rent increase with the tenant. The landlord proposed an increase to \$1600.00 which was not accepted by the tenant. The landlord testified that the negotiations did not go well, and communication broke down. In the meantime, the landlord's daughter jumped at the opportunity and said she would take the unit if the tenant was not agreeable to the rent increase. The landlord testified that her daughter is 24 years old, recently graduated from university and now returned home working full time in the city. Her daughter began her profession in June 2021 and has been residing with them since. The landlord testified that her daughter's boyfriend also frequently visits from out of town and sleeps over which is not something they are too comfortable with. The landlord testified her daughter had already been looking for rentals in the area and submitted a couple postings she responded to back in December 2021 in support. The landlord testified that her daughter was still actively searching for a rental since this time. The landlord testified that when negotiations broke down with the tenant and her daughter expressed interest in the unit it just made sense to rent to her daughter as she would be an easier tenant to deal with.

The tenant is disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenant submits the landlord only issued the Notice after she refused to accept the rent increase which was well above the maximum increase permitted under the Act. The tenant testified that she tried to negotiate a mutually agreeable increase but the landlord refused to negotiate.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of

the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The testimony and evidence of the parties supports a finding that the landlord does intend in good faith for her daughter to occupy the rental unit. The landlord's testimony had the ring of truth to it. I find it very reasonable that her recently graduated 24-year-old daughter who now works in the city would need her own space. I accept the landlord's testimony and evidence that her daughter had been recently searching for rental properties in the area and was still actively searching when this opportunity arose. Although on the surface it may appear that the landlord was not acting in good faith due the fact that she did initially try to raise the rent, I find that this was not the sole determining factor in the landlord's decision. I find the landlord is within her right to make a judgement call that having her own daughter as a tenant would be easier.

I find the landlord does intend in good faith to have her daughter occupy the rental unit.

The tenants' application to cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As this tenancy has ended the tenant's application for an order for the landlord to comply with the Act is dismissed without leave to reapply. The tenant is not entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on June 30, 2022**. Should the tenant(s) 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: June 06, 2022

Residential Tenancy Branch