



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing the Application for Dispute Resolution.

The Tenant stated that on June 13, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents. As such, I find these documents were served to the in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On June 02, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As this evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

In September of 2022 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on March 16, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 29, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 29, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2013 and that rent is due by the first day of each month.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's on May 30, 2022, which declared that the Tenant must vacate the rental unit on July 31, 2022. The reason for ending the tenancy cited on the Notice is that the rental unit will be occupied by the landlord or the landlord's spouse.

In support of the Two Month Notice to End Tenancy for Landlord's Use the Landlord declared that:

- She is currently living in a three-level home on the south end of Vancouver Island;
- She wishes to move the rental unit, which is a one-level unit and is in a different community than her current home;
- She purchased the rental unit in 2005 for the purposes of moving to this community when she retires;
- She is 75 years old and is retiring; and
- She wishes to proceed with her long-term plan of living in the rental unit.

The Landlord referred to a doctor's note at page 55 of her evidence. In this note the physician declares, in part, that the Landlord would benefit from living in a one-level home.

In support of her application to dispute the Two Month Notice to End Tenancy for Landlord's Use the Tenant declared that:

- She disputed the Two Month Notice to End Tenancy for Landlord's Use because she has been unable to find alternate accommodations;
- She does not believe the Landlord is acting in good faith because she has been "mean" in several of her communications; and
- She does not believe the Landlord intends to move into the rental unit.

When asked to explain how the Landlord was "mean" the Tenant replied that she uses "mean words".

The Tenant submitted various emails that the parties have exchanged during the tenancy.

The Landlord stated that if an Order of Possession is granted, she would like it to be effective on November 30, 2022.

Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on May 30, 2022 the Landlord served the Tenant with notice of the Landlord's intent to end the tenancy pursuant to section 49(4) of the *Act*.

I find that the Landlord has established grounds to end this tenancy pursuant to section 49(4) of the *Act*. In reaching this conclusion I was influenced, in large part, by her testimony that she purchased the rental unit in 2005 for the purposes of retiring in the rental unit. I was further influenced by her undisputed testimony that she is 75 and is now retired. I find her testimony in this regard was consistent and forthright, and I have no reasons to disregard it.

In reaching this conclusion I was influenced by the doctor's note which was submitted in evidence. This note declares that the Landlord was born in 1947 and that she would benefit from living in a one-level home. As there is no dispute that the rental unit is a one level home and the Landlord declares she is currently living in three level home, I find this note corroborates the Landlord's testimony that she intends to move into the unit.

During this adjudication I have placed no weight on the Tenant's submission that she has been unable to find alternate accommodations. This is not grounds to dispute a Two Month Notice to End Tenancy for Landlord's Use.

During this adjudication I have placed no weight on the Tenant's testimony that she does not believe the Landlord intends to move into the rental unit. I find this is mere speculation and it is not sufficient to refute the Landlord's testimony that she is moving into the unit.

During this adjudication I have placed no weight on the Tenant's submission that the Landlord is acting in good faith, which she bases on her opinion that the Landlord has been "mean" to her in several of communications. Even if the Tenant were able to establish that the Landlord has been unpleasant to her, that is not sufficient to refute the Landlord's testimony that she is moving into the unit.

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 49(4) of the *Act*, I dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use. As the application to set aside the Notice to End Tenancy has been dismissed and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant's application is without merit, and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. As requested by the Landlord, the Order of Possession will be effective on **November 30**,

2022. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 14, 2022

Residential Tenancy Branch