



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on August 31, 2022. The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 30, 2022 (the Two Month Notice);
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing and was assisted by RG, an advocate. Both the Landlord and the Tenant provided affirmed testimony.

At the beginning of the hearing, the Landlord advised that the surname used in the Tenant's application was not correct. With the agreement of the parties and pursuant to section 64(3) of the Act, I amend the Tenant's application to reflect the Landlord's current surname.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package in person. The Landlord acknowledged receipt. In addition, the Landlord testified the documentary evidence submitted in response to the Tenant's application was served on the Tenant in person. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue, which is not related to the Tenant's request for order that the Landlord comply with the Act, the Regulation, and/or the tenancy agreement. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the Tenant occupies a trailer located on the Landlord's property. The trailer belongs to the Landlord. The Landlord occupies a house on the same property. The parties agreed the Tenant moved onto the rental property and started paying rent on or about April 1, 2020. Rent of \$550.00 per month is due on the first day of each month. The Tenant did not pay a security deposit.

The Landlord testified the Two Month Notice was served on the Tenant by attaching a copy to the Tenant's door. The Tenant's application acknowledges receipt of the Two Month Notice on August 31, 2022. The Two Month Notice is signed and dated, gives the address of the rental unit, states the effective date, and is in the approved form.

Although the relevant page was not submitted into evidence, the parties agreed the Two Month Notice served on and received by the Tenant describes the grounds for ending the tenancy. Specifically, the parties agreed the Two Month Notice was issued on the basis that the trailer would be occupied by the Landlord or her spouse.

When called upon to provide evidence in support of the Two Month Notice, the Landlord testified that she does not intend to move into the trailer. Instead, the Landlord testified that she intends to use the trailer as a hydroponic greenhouse. As a backup, the Landlord intends to use the trailer for her parents when they come to visit from overseas. The Landlord stated that these uses were not options provided on the Two Month Notice document but that she selected the best option. The Landlord submitted that she should be able to use the trailer for her own purposes.

On behalf of the Landlord, RG also submitted there is uncertainty with respect to the meaning of "occupied" on the Two Month Notice.

In reply, the Tenant testified that the Landlord's stated uses are "far-fetched" because the trailer is not suitable for use as a hydroponic greenhouse (the Tenant testified she is a horticulturalist) and because the Landlord could host visitors in her 5-bedroom house.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

During the hearing, the parties raised an issue with respect to whether the Residential Tenancy Act or the Manufactured Home Park Tenancy Act applies. In this case, I find that the following factors weigh in favour of a finding that the Residential Tenancy Act applies:

- the trailer belongs to the Landlord and was located on the property when the tenancy began;

- neither party submitted documentation for or against a finding that the property is zoned as a manufactured home park; and
- the Landlord lives on the property and retains control over portions of the property.

However, even if I am wrong and the Manufactured Home Park Tenancy Act applies, the outcome remains unchanged as the Landlord has issued a notice to end tenancy under section 49 of the Residential Tenancy Act.

Continuing, section 49(3) of the Act permits a landlord to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, I find the Two Month Notice was issued on the basis that the rental unit will be occupied by the Landlord or her spouse.

Policy Guideline #2A provides clarification on the meaning of “occupied” in the context of a notice to end tenancy issued under section 49 of the Act:

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

In this case, based on the Landlord’s testimony, I find that the trailer will not be occupied by the Landlord or her spouse and used as living accommodation. Rather, the Landlord confirmed her intention to use the trailer as a hydroponic garden and alternatively as a place for her parents to stay when they visit from overseas. That is not what is contemplated under section 49 of the Act or Policy Guideline #2A.

For the above reasons, I find that the Two Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

As the Tenant has been successful, I find she is entitled to recover the filing fee paid to make the application. I order that \$100.00 may be deducted from a future rent payment at the Tenant's discretion.

During the hearing, the parties raised an issue with respect to the impact of improvements made to the trailer and rental property by the Tenant. However, that matter was not before me and has not been considered in this decision. The parties are encouraged to contact an Information Officer at the Residential Tenancy Branch or seek legal advice with respect to this issue.

Conclusion

I order that the Two Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

I order that the Tenant may deduct \$100.00 from a future rent payment in recovery of the filing fee paid to make the application.

Pursuant to Rule of Procedure 2.3, the Tenant's request for an order that the Landlord comply with the Act, the Regulation, and/or the tenancy agreement is dismissed with leave to reapply.

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: November 18, 2022

Residential Tenancy Branch