



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62

Both parties attended the hearing. The landlord DS and agents NE and SS appeared. The tenant, TM appeared for herself.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated September 20, 2022, with an effective date of November 30, 2022 and the landlord’s materials in response to the dispute notice. The landlord confirmed receipt of the dispute notice. The tenant stated they did not serve their documents on the landlord as required pursuant to Rule 3.15 of the RTB Rules of Procedure. Therefore, I will not consider the tenants’ documentary materials. Service of the Two Month Notice, dispute notice and the landlord’s materials complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the Two Month Notice to End Tenancy for Cause valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?
2. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

Tenancy commenced June 15, 2009, and there is a current written tenancy agreement starting August 1, 2019 on a month to month basis. Rent is currently \$1,784.37 and the landlord holds a security deposit of \$800.00 in trust. The tenants still occupy the rental unit.

Both parties agree that the rental unit was for sale at some point during the tenancy.

The landlord stated that they served the Two Month Notice in order to allow their daughter to occupy the rental unit. The landlord produced a letter dated October 24, 2022 from the daughter's current landlord, who ended the daughter's tenancy in order to do structural repairs to that unit. The landlord stated that her daughter will be moving into the rental unit.

The tenants stated that the Two Month Notice was served in order to end the tenancy after a One Month Notice to End Tenancy was unsuccessful. The tenants allege that the landlord is not acting in good faith, and the reason to end the tenancy is not to have the daughter occupy the rental unit. The tenant TM related a conversation she overheard in the summer of 2021 where the landlord and her daughter and son-in-law were discussing removing the tenant from the unit. The landlord stated that the only time they were in attendance at the rental unit was approximately one year ago.

Analysis

Section 49 of the Act permits a landlord to issue a two month notice to end a tenancy if the unit is required for a close family member who intends in good faith to occupy the unit. The notice was provided in evidence and meets the form and content requirements under section 52 of the Act.

Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some

situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord had the burden of proving the validity of the Two Month Notice served on the tenant.

The landlord has provided independent evidence in the form of a letter from her daughter’s previous landlord showing that her daughter can no longer live in her current residence and requires a place to live. I have considered the tenant, TM’s evidence regarding the conversation she overheard, and I note that the conversation occurred more than a year prior to the issuance of the Two Month Notice and therefore I give that evidence little weight when assessing the good faith of the landlord. Similarly, I accept the undisputed evidence that a One Month Notice to End Tenancy was given and was cancelled in a previous dispute resolution hearing. However I accept based on the letter dated October 24, 2022, provided by the landlord, that circumstances have changed, and the landlord’s daughter now intends to move into the rental unit due to her current rental unit being uninhabitable.

I find that the Two Month Notice is valid and enforceable. The tenants’ application to cancel the Two Month Notice is dismissed. The application for an order requiring the landlord to comply with the Act, regulations or tenancy agreement is also dismissed.

Conclusion

The landlord is granted an order of possession which will be effective on November 30, 2022 at 1:00pm. The order of possession must be served on the tenants. The order of possession may be filed in 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: November 14, 2022

Residential Tenancy Branch