



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 in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 04, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on July 04, 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence 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?
Is the Tenant required to pay for a portion of the natural gas bills?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on January 01, 2017;
- the Landlord rents the entire house from the owner of the house and he sublets the lower suite to the Tenant;
- rent is due by the first day of each month;
- the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, dated June 30, 2022, which declared that the Tenant must vacate the rental unit by August 30, 2022; and
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because it will be used by the Landlord's child.

The Landlord stated that he served the Two Month Notice to End Tenancy for Landlord's Use because his daughter, who is currently living with him in the upper portion of the residential complex, wishes to move into the rental unit.

Both parties made submissions on the issue of good faith. Those submissions are not summarized here because the issue of good faith is not relevant to my decision, for reasons that will be made clear in my analysis.

The Tenant stated that water and heat are included with the tenancy. The Landlord stated that the Tenant was advised, prior to the start of the tenancy, that heat was not included with the tenancy. The Tenant stated that he was not told, at the beginning of the tenancy, that heat was not included with the tenancy. The Landlord acknowledges that the tenancy agreement declares that heat is included with the tenancy, but he contends that was included in error.

The Landlord and the Tenant agree that hot water is provided with the tenancy.

The Landlord and the Tenant agree that natural gas is used in the rental unit for heat and hot water. The parties agree that the Landlord has periodically asked the Tenant to pay a portion of the natural gas bill and that the Tenant has paid a portion of some natural gas bills.

The Landlord and the Tenant agree that on June 26, 2022 the Landlord asked the Tenant to pay increased rent of \$300.00 and that the Tenant has not agreed to pay that increase.

Analysis

Section 1 of the *Residential Tenancy Act (Act)* provides various definitions of the term “landlord”. Section 1(c) of the *Act* defines a landlord as “a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit. In circumstances such as these, where an individual rents an entire house and then sublets a self-contained suite in the house to a third part, the person who rents the entire house meets the definition of landlord, as that term is defined by section (1)(c) of the *Act*. I therefore find that the Respondent is a Landlord (sub-landlord) and the Applicant is a Tenant (sub-tenant).

Section 49(3) 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.

Section 49 of the *Act* provides a definition of a landlord that is far more limited than the definition provided in section (1)(c) of the *Act*. Section 49 defines a landlord, for the purposes of section 49(3) of the *Act*, as an individual who at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

As there is no evidence that the Respondent owns, or has ever owned this residential property, I find that the Respondent does not meet the definition of a landlord as that term is defined by section 49 of the *Act*.

As section 49 provides a specific definition of the term “landlord”, only individuals who meet that definition of a landlord have the right to end a tenancy pursuant to section 49 of the *Act*. As the Respondent is not a landlord, as that term is defined by section 49 of the *Act*, I find that he does not have the right to end this tenancy pursuant to section 49 of the *Act*.

As the Respondent does not have the right to end this tenancy pursuant to section 49 of the *Act*, I grant the Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

I favor the testimony of the Tenant, who declares that heat was included with the tenancy, over the testimony of the Landlord, who declares that heat was not included with the tenancy. I favor the testimony of the Tenant because it is corroborated by the written tenancy agreement. Conversely, the Landlord submitted no evidence to support his testimony that the reference on the tenancy agreement to heat being included was included in error.

As natural gas is used for heat and hot water, which are provided with the tenancy, I find that the Tenant is not obligated to pay any of those bills. I therefore direct the Landlord to refrain from asking the Tenant to pay any portion of any gas bills.

In the event the Landlord does not reimburse the Tenant for any portion of gas bills the Tenant has already paid, the Tenant has the right to file another Application for Dispute Resolution in which he seeks compensation for those payments.

The parties are reminded that the Landlord may only increase the rent in the amounts set out in section accordance with section 43(1) of the *Act*, which are

- an amount calculated in accordance with the Regulations,
- an amount ordered by the director on an application under subsection (3), or
- an amount agreed to by the tenant in writing.

I find that the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use is set aside and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it

may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this monetary Order, the Tenant has the right to reduce a monthly rent payment by \$100.00 in full satisfaction of the monetary claim, pursuant to section 72(2)(a) of the *Act*.

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