



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

The landlord testified that the landlord's evidence was provided to the tenant, which was not disputed by the tenant. The tenant has provided some of the same evidence as the landlord, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Act*, and in good faith?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to issuing notices to end the tenancy?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2020 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$900.00 is payable on the 1st day of each month. In January, 2020 the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a cabin on property owned by the landlord, and the landlord also resides on the property.

The landlord further testified that on August 17, 2022 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy of pages 1 and 2 only of the 3-page form have been provided by both parties for this hearing. It is dated August 17, 2022 and contains an effective date of vacancy of August 27, 2022. The reason for issuing it states that the tenant failed to pay rent in the amount of \$400.00 that was due on August 16, 2022. The landlord testified that the original is a 1-page document, but photocopied is 2 pages.

On February 1, 2022 when the tenant paid rent the landlord told him that the landlord's son will be moving into the rental unit in about 5 months. The tenant said that was fine, but he didn't move out, so the landlord spoke to his son about waiting another month. However, a month later, the tenant said he had a place to move to and wanted another 2 weeks, which was agreed. The tenant said he would pay the landlord \$500.00 to stay for 2 weeks, so the tenant still owes a partial month of rent.

The landlord also testified that he served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to the tenant on August 17, 2022, and a copy of pages 1 and 2 of the 4-page form have been provided by both parties for this hearing. It is dated August 17, 2022 and contains an effective date of vacancy of October 17, 2022. The reason for issuing it states: the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the child of the landlord or landlord's spouse. The landlord testified that his son will be moving into the rental unit with his wife. They currently live in Vancouver.

The landlord's witness is the landlord's partner who testified that the notices to end the tenancy were served to the tenant personally.

The witness has also provided a written statement for this hearing, and the witness affirmed that the contents are true.

The tenant testified that the electricity and internet were cut off on August 15, 2022 and the tenant had to run a generator. On September 1, 2022 power was reconnected and the tenant paid the rent.

The tenant further testified that he has not spoken to the landlord's son, but does not believe that the landlord's son will move into the rental unit. That would involve moving all household items over the ferry and to quit his job. If the landlord's son wanted to move to the Island, he would have done so. He also has a twin brother who he wants to be with. He would not have changed his mind.

The tenant believes the landlord will re-rent for a higher amount, and seeks an order that the landlord comply with the law.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Further, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to accomplish the purpose stated in the Notice.

The law also states that any notice to end a tenancy given by a landlord must be given in the approved form. The parties have both provided only pages 1 and 2 of the Notices. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is a 3-page form, and the Two Month Notice to End Tenancy for Landlord's Use of Property is a 4-page form. Since both parties have provided only the first 2 pages, I am not satisfied that the notices given to the tenant were in the approved form. Therefore, I cancel both notices and the tenancy continues.

The tenant has also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement and testified that he seeks an order that the landlord refrain from issuing a notice to end the tenancy for use of the landlord's son because the tenant does not believe that the landlord's son will occupy the rental unit. I cannot order a landlord to refrain from issuing notices to end the tenancy, and I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application, the tenant is entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant may reduce rent for a future month by that

amount, or may serve the landlord and file the order for enforcement in the Provincial Court of British Columbia, Small Claims division.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 17, 2022 is hereby cancelled.

The Two Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled, and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

The tenant's application for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: December 14, 2022

Residential Tenancy Branch