



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC
 CNL

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant which have been joined to be heard together. The first application seeks an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement. The second application seeks an order cancelling a notice to end the tenancy for the landlord's use of the property.

The tenant attended the hearing accompanied by the tenant's spouse. The landlord was represented at the hearing by an agent, who was accompanied by the landlord's spouse and daughter.

The landlord's agent, and the tenant, the tenant's spouse, and the landlord's daughter each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the landlord's agent agreed to the order that the landlord comply with the *Act*, regulation or tenancy agreement, and that the tenants will not be required to pay for any extra utilities other than those required by the tenancy agreement, and the landlord no longer seeks any compensation from the tenant for past utilities. Since the landlord's agent has agreed on behalf of the landlord, I make that order.

Issue(s) to be Decided

The issue remaining to be decided is:

- has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, and in good faith?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 19, 2016 and reverted to a month-to-month tenancy after November 18, 2017, and the tenants still reside in the rental unit. Rent in the amount of \$2,500.00 was payable on the 19th day of each month, which has been increased over time and is currently \$2,700.00 per month, and there are no rental arrears. On October 31, 2016 the landlord collected a security deposit from the tenant in the amount of \$1,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house with a small basement, and a copy of the tenancy agreement has been provided by both parties for this hearing.

The landlord's agent further testified that on October 26, 2022 the tenant was served by registered mail with a Two Month Notice to End Tenancy for Landlord's Use of Property, and the landlord has provided a copy. It is dated October 25, 2022 however the effective date of vacancy is blank. 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 landlord or the landlord's spouse. The landlord and the landlord's spouse and daughter will be residing in the rental unit. The family is now staying in a hotel.

The landlord and the landlord's spouse arrived from China on December 18, 2022. The landlord's daughter arrived in August, 2022.

The landlord's spouse also owns other rental property, however the landlord cannot move to that property because it has been rented on a fixed-term tenancy which started in May, 2022.

The landlord has also provided a copy of a One Month Notice to End Tenancy for Cause dated November 23, 2022 with an effective date of vacancy of December 31, 2022. The reason for issuing it states: Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent. The landlord's agent agrees that the Notice should be cancelled.

The landlord's daughter testified that the rental unit has always been rented. The landlord's family are currently living in a hotel in Vancouver. The landlord's daughter is a

university student and arrived back in Canada in August, and lived in a rented house until her parents came back on December 18, 2022. It was in September, 2022 that the family decided to return to Vancouver.

The tenant testified that the rental home has a basement suite, and the neighbouring tenant in that suite moved out on January 31, 2022. The neighbouring tenant and the landlord were in an argument about lack of maintenance, and the neighbouring tenant cranked the heat and left windows open in the winter and the landlord blamed the tenant for the increase in utilities. Looking at the records, the tenant testified that the use was typical for other months, and the tenant is not responsible for the overage.

The tenant further testified that the landlord lives in another house and has only been in town from China for a few days, according to the new representative of the landlord, who is a Property Manager. He and the landlord were at the rental unit 2 days ago doing maintenance in the basement suite.

The address for service of the landlord on the tenancy agreement is the address of the landlord's daughter.

The tenant's spouse testified that the agent of the landlord who attended this hearing is not who he says he is; the tenants have known him for 6 years and testified that the agent the tenants know speaks better English.

The tenant's spouse also testified that the other property owned by the landlord has a basement suite, and the landlord's letter states that the upper level is rented. Therefore, the tenant's spouse assumes the landlord and family are staying the basement at that residence, not in a hotel.

Analysis

Firstly, I make no findings of fact or law with respect to the name of the person who attended this hearing as agent for the landlord. Landlords and tenants are permitted to have an agent present to assist or represent the party, and I find that the name is not relevant.

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*. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must establish good faith intent to accomplish the stated purpose for ending the tenancy with no ulterior motive.

The law also states that a landlord may end a tenancy if the landlord intends in good faith to accomplish the stated purpose for ending the tenancy.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property, and I find that it is in the approved form and contains information required by the *Act*.

During the hearing I questioned the landlord's agent about his testimony that the landlord arrived from China 4 ½ months ago, and that the landlord arrived on December 18, 2022, which is clearly not 4 ½ months ago. The landlord's agent replied that his testimony was not 4 ½ months ago, and perhaps I misheard the earlier testimony due to feed-back interference on the conference call. If that is correct, and that the landlord's agent actually said, "for half a month," not "4 ½ months," that would be consistent with the testimony of the landlord's agent and the landlord's daughter.

The tenant testified that the landlord lives in another house and has only been in town from China for a few days, according to the new representative of the landlord, who is a Property Manager. I find that to be hear-say evidence only and no corroborating evidence has been provided for this hearing.

I have also reviewed all of the other evidentiary material including the emails exchanged by the parties and written submissions. The evidence shows that the parties had some conversations by email about increasing the rent, and about the utilities, as well as the landlord learning that other people, besides the tenants had been living in the rental unit for quite some time. However, I do not find any of those issues to be a factor to disbelieve that the landlord is acting in good faith.

I accept the testimony of the landlord's agent and the landlord's daughter that the landlord arrived from China on December 18, 2022 and have been living in a hotel since that time. I see no reason to cancel the Notice or any evidence of an ulterior motive, and I dismiss the tenant's application to cancel the Notice.

The Two Month Notice to End Tenancy for Landlord's Use of Property is dated October 26, 2022, and I accept that it was served by registered mail on that date, which is deemed to have been served 5 days later, or October 31, 2022. The *Act* states that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law. Since rent is payable on the 19th day of each month, the effective date of vacancy must be January 18, 2023.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy, I must grant an Order of Possession in favour of the landlord, so long as the

notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. And, having found that the effective date of vacancy is January 18, 2023, I grant the order of possession effective at 1:00 p.m. on that date.

Generally, where an applicant is successful with an application, the applicant is entitled to recovery of the filing fee. In this case, the landlord agreed to settle one of the tenant's disputes, and the tenant was not successful in the second dispute. Therefore, I decline to order that the tenant recover the filing fees from the landlord.

Conclusion

For the reasons set out above, and by consent, I hereby order the landlord to comply with the *Residential Tenancy Act*, regulation or tenancy agreement by not requiring the tenant to pay the utilities other than what is required in the tenancy agreement.

The One Month Notice to End Tenancy for Cause dated November 23, 2022 is hereby cancelled, by consent.

The tenant's application for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2022 is hereby dismissed.

I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on January 18, 2023.

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: January 06, 2023

Residential Tenancy Branch