



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, OLC

Introduction

On September 14, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing, with S.M. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

S.M. advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on September 28, 2022, and the Landlord confirmed that she received this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. As this evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence by registered mail on January 10, 2023, and the Tenant confirmed that he received this package. As this evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed submissions related to the Notice, and the Tenant's other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started between 16 to 20 years ago, that rent was presently established at \$610.00 per month, and that it was due on the first day of each month. A security deposit of \$250.00 was also paid. The Landlord claimed that a tenancy agreement was signed when the tenancy originally started; however, she stated that she did not know where it was. The Tenant claimed that a tenancy agreement was never signed between the parties.

All parties also agreed that the Notice was posted on the Tenant's door on August 31, 2022. The reason the Landlord served the Notice is because "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)." As well, the Landlord checked off the box indicating that the rental unit will be specifically occupied by "The child of the landlord or the landlord's spouse." The effective end date of the tenancy was noted as October 31, 2022, on the Notice.

The Landlord advised that the Notice was served because her son has been living with her for the last three years; however, he was accepted into the police academy in February 2022 and he required the rental unit to study, for privacy, and for independence. As well, she testified that he was newly engaged and that he required the space for his fiancé to move in so they can plan their wedding. However, she stated that the fiancé lived far away, and she was not sure when she planned to move in. She advised that her son had changed his address on some bills to that of the rental unit in September 2022, in anticipation of moving into the rental unit, and she referenced the documentary evidence submitted to support this claim. Although, she stated that as the Notice was disputed, he never changed his address back and that his mail would be going to the dispute address still.

S.M. questioned why it is such an emergency for the son to move into the rental unit now, and why the son and fiancé would want to move into such a small space. He alleged that the son had an expensive vehicle and lived a lavish lifestyle, and he was suspicious of the legitimacy of the son realistically moving into a tiny, "dishevelled" rental unit that had issues with mold and mice. He stated that the Landlord did not elaborate on any difficulties that the son had living with his parents. As well, he submitted that the property contains other units which are bigger and nicer, so it is not clear why the Landlord chose the least, most unlikely unit for her son to occupy. He also noted that the distance from the rental unit to the Justice Institute is no farther than from the Landlord's house.

He surmised that one of the reasons the Landlord wanted to end the tenancy was due to rent being significantly below market value. He testified that the Landlord had illegally increased rent in the past, and that the Landlord had threatened that she would find a way to evict the Tenant. As well, he suggested that the Landlord had not been declaring the rental income to the Canada Revenue Agency, and he suggested that if the Landlord was defrauding the CRA, that this would lend weight to the suggestion that the Landlord is not acting in good faith with respect to service of the Notice. However, he did not have any documentary evidence to support any of his speculation.

The Tenant advised that the Landlord pressured him to increase the rent from \$500.00 to \$600.00 in December 2018. When he informed her that this increase was illegal, he testified that she “did not take him seriously” and that she informed him that she “could find a way to get rid of [him]” if he did not agree. He stated that the Landlord did not provide him with a Notice of Rent Increase form, that he started paying this increased amount in January 2019, and he referenced documentary evidence to support this position. He then advised that his rent was increased in 2022 to \$610.00; however, while he was provided with the Notice of Rent Increase form, it appears as if the legal rent increase should have been to \$609.00.

The Landlord confirmed that she increased the rent to \$600.00, and that she did give him notification of the rent increase; however, this was written on a piece of paper and not on the required Notice of Rent Increase form. She stated that the Tenant never disputed it and that he agreed to this amount. As well, she refuted the claim that she ever threatened to kick the Tenant out. With respect to the Notice, she testified that her son needs the rental unit “only to sleep in” as he is out of the house 12 hours a day, and that he needs the rental unit because he cannot do certain things when he is living with the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

"The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant."

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, while the Landlord claimed that the rental unit was to be used for her son, the undisputed evidence is that the property contained three different rental units, and that the basement was the smallest by a significant amount. While it is not beyond the realm of possibility that the son and his fiancé would want to occupy the rental unit, the Landlord did not provide any response to why neither of the other, larger units were not given the Notice instead. Again, while

plausible, I find it curious why the son and fiancé would choose to move into such a small space when other larger and more appropriate units may have been available.

Moreover, while the Landlord alleged that her son changed his addresses in September 2022 to that of the rental unit, as noted above, there are three separate units on the property. When reviewing the address change evidence submitted by the Landlord, it did not specifically indicate that he changed his address for the basement rental unit, which is the subject of the nature of this dispute. I find that this does not support a finding that that was the address that he intended to live in. Furthermore, she acknowledged that he did not change his address back when they discovered that the Tenant disputed this Notice. Given that the Landlord knew of this dispute in October 2022, and that a hearing to determine this matter was scheduled for February 2023, I find it curious, odd, and inconvenient that the son would continue to have his mail go to the property address for five additional months. This causes me to question the reliability of the Landlord's submissions.

Furthermore, I find it important to note that the Landlord admittedly was not familiar with the *Act*. The undisputed evidence is that the Landlord illegally increased the rent from \$500.00 to \$600.00 in 2018, and the only issue left to determine on this matter would be whether the Tenant adequately mitigated his losses, and if he should be entitled to a rent reduction due to this illegal rent increase. However, the Tenant would be required to file a separate Application to seek remedy for this.

Regardless, when reviewing the Notice of Rent Increase form that the Landlord submitted for the latest rent increase, I note that the year for the last rent increase (01-Jan-2018) and the year for when the rent increase takes effect (01-Apr-2021), based on the date the form was allegedly created (26/11/2021), are likely incorrect, that the amount of the rent increase is incorrect, and that the form is not signed by the Landlord. Moreover, if the date for the last increase was actually to take effect on 01-Apr-2022 (assuming that the Landlord made a typographical error), I note the Tenant's documentary evidence of paying \$610.00 on March 1, 2022, which would have been a month early. Clearly, some documents and transactions during this tenancy are inconsistent and in disarray.

When reviewing the Landlord's testimony, in conjunction with these discrepancies in increasing the rent, it is clear that the Landlord knew little of her rights and responsibilities as a Landlord under the *Act*. I find that this causes me to question

whether the Notice was served under good faith, or if there was some sort of ulterior motive behind it.

In addition, I note that the Landlord's testimony with respect to her son's alleged use of the rental unit was fairly broad and general in nature. Despite the Landlord's documentary evidence submitted supporting the use of the rental unit, I do not find this evidence to be compelling, nor do I find the Landlord's submissions to be consistent, reliable, or persuasive. As such, I have cause to question the truthfulness or legitimacy of these submissions on the whole. I am suspicious that these submissions are a fabrication of a false narrative in an attempt to portray that it had been the Landlord's son's intention to use the rental unit in good faith, prior to service of the Notice. When weighing the totality of the evidence and submissions before me, I am doubtful that the Notice was served in good faith. I find, on a balance of probabilities, that the Landlord's reasons above were created to disguise an ulterior motive for serving the Notice.

Ultimately, based on the doubts raised, I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of August 31, 2022, is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property of August 31, 2022, to be cancelled and of no force or effect. This tenancy continues until ended in a manner in accordance with 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: February 5, 2023

Residential Tenancy Branch