



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, 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 the landlord's use of the property; an order permitting more time to dispute a notice to end the tenancy; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate, and gave affirmed testimony. The landlord also attended assisted by the landlord's daughter. The landlord and the landlord's daughter and a son of the landlord each gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, and all evidence that I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2008, but the tenant moved to the basement suite in December, 2008 and still resides there. The landlord resides in the upper level of the home. A written tenancy agreement

exists, but a copy has not been provided for this hearing, however rent in the amount of \$600.00 is payable on the 1st day of each month and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit from the tenant.

The landlord further testified that on June 30, 2022 the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated June 30, 2022 and contains an effective date of vacancy of December 31, 2022. The title of the form has been changed by crossing off "Two" and handwriting added that states "Six mn". 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 it was changed to 6 months to give the tenant plenty of time to find accommodation.

The landlord's daughter currently lives with the landlord. The daughter's marriage broke down, who was living in the Arctic. When the landlord talked to the tenant at the time that the paperwork was given the landlord told the tenant that. The landlord's daughter needed to heal from that so was temporarily staying with the landlord. The landlord intends for the landlord's daughter to live in the rental unit.

The landlord's first witness is the landlord's daughter who testified that she currently lives with her mother. She was in Inuvik with her husband and the marriage very suddenly broke up. The witness had already been in severe clinical depression and needed a temporary place so came back to the house she grew up in to stay with her mother and heal. The witness arrived at the very end of October, 2021, and her belongings are in storage.

It was not an easy decision, and it took some time and healing. The marriage is definitely over and the witness will not be going back to the Arctic and needs permanent accommodation. Living in the rental unit will be the perfect fit for the witness and her aging mother. In a family discussion the family felt the landlord should give 6 months notice to the tenant to assist him in finding a place, as a courtesy.

The landlord's second witness is the landlord's son who testified that the family got together and discussed the need for his sister to move to the landlord's basement suite and have her own place, due to her circumstances, dissolving marriage and needing a place to stay. They also discussed providing the notice to end the tenancy to the tenant 6 months in advance of the move-out date to give the tenant more time to find accommodation.

The tenant testified that he moved into the rental unit in 2008 and has lived there for about 13 years. When the tenant received the notice to end the tenancy, the landlord explained her daughter's intention was to move into the rental unit. The landlord gave the Notice to the tenant, which was amended, crossing out "Two" months and written in was "Six ms" and the landlord explained that would give the tenant more time to find suitable accommodations. Nothing was said about a family discussion in that regard.

The tenant was dumbfounded when he received the Notice and virtually started looking at the rental market and found out how small the rental market is. Air BNB has taken over, but the tenant is still struggling to find accommodations.

When the landlord's daughter arrived, there was no communication to the tenant that she was temporarily staying upstairs with the landlord.

Everything has always been done in good faith, and the tenant is caught in the middle of something causing a problem to the landlord and family. The tenant wishes that the landlord had invited the tenant to the family discussion rather than the tenant feeling blind-sided. The tenant has been searching advertisements and talking to people and has been looking since July 1 and it is tough.

SUBMISSIONS OF THE LANDLORD:

The landlord gave 6 months notice in good faith, knowing that the market was not good, but it's gone on 8 months now. The landlord is aware of compensation required by the *Residential Tenancy Act*.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The notice to end the tenancy is a legal document, and when the landlord amended the top of it, that invalidated it. The tenant has filed against it, and the clock would then start ticking in November, not in June. As soon as the landlord altered it, to 6 months, and there is no such thing, it is not valid.

If the tenant's Advocate had known, the Advocate would have encouraged the tenant to dispute the notice sooner, however the Advocate made the presumption that the clock would start ticking on November 1, counting back.

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*, which can include the reason(s) for issuing it. Also, in the case of a Two Month

Notice to End Tenancy for Landlord's Use of Property (the Notice) the landlord must demonstrate good faith intent to accomplish the purpose for ending the tenancy, without an ulterior motive.

The tenant's Advocate takes the position that the Notice is invalid because the landlord amended the title of the form. The *Act* specifies that:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The *Act* also deals with the effective date of vacancy:

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*],

46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the law. There is nothing to prevent the landlord from giving a longer notice period, and I reject the position that by changing the form or the effective date it is invalidated.

I also accept the undisputed testimony of the landlord and witnesses indicating that the landlord's daughter intends in good faith to reside in the rental unit due to her change in circumstances.

With respect to more time to dispute the Notice, the tenant's Advocate submitted that counting back from the effective date, the tenant had until November 1, 2022 to dispute it. However, the *Act* specifies:

49 (8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

In this case, Section 49 (8) (a) applies. The evidence shows that the tenant was personally served with the Notice on June 30, 2022 and the tenant's application was filed on October 20, 2022, well beyond 15 days as required by the *Act*.

Having found that the tenant has not disputed the Notice within the time permitted under the *Act*, and having found that the Notice is in the approved form, and in the absence of any evidence that the landlord is not acting in good faith, I dismiss the tenant's

application. Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, 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. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed in the Supreme Court of British Columbia and enforced.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

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: March 01, 2023

Residential Tenancy Branch