



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on November 14, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 28, 2023.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. On the basis that both parties received full disclosure from the other, I proceeded with the hearing.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement. The parties signed the agreement on August 17, 2020 for the tenancy that began on September 1, 2020. The rent was set at \$1,300. This amount did not increase over the course of this tenancy.

The Landlord issued this Two-Month Notice on November 13, 2022. The Tenant provided a copy of this document in their evidence. It provides the move-out end-of-tenancy date as January 1, 2023. The tenant in the hearing provided that they did not move out on this date and have continued to reside in the rental unit through to March 2023.

Page 2 of the document shows the landlord's indication that "The rental unit will be occupied by the landlord or the landlord's close family member . . .". They gave the additional detail that the landlord or the landlord's father or mother will occupy the rental unit.

The Tenant provided a copy of a letter from the Landlord dated February 27, 2023. The Landlord also provided a copy of this as evidence for this hearing. This set out the Landlord's position that their parent will be moving into the downstairs suite (*i.e.*, the rental unit). The Landlord also set out the following:

- the tenancy agreement ended in October 2022 and was renewed
- the Tenant offered to increase the rent to \$200; however, the Landlord counter-requested \$300 because the increased costs of maintaining the rental unit property
- they were "still contemplating what to do regarding my family needing more space"
- their parent lives with the Landlord upstairs, along with two children – their pre-teen child needs their own room, so the rental unit suits this purpose
- having their parent in the rental unit would provide a resource for the Landlord to watch their other family members, with the Landlord being a single parent

In the hearing, the Landlord basically set out these points in their testimony. They described the lower part of the house as consisting of the rental unit, a storage space, and a separate unit currently occupied by their cousins. In total, this makes for six of the Landlord's family members, including the Landlord, who are living in the house.

The Tenant stated they did not have this additional information when they applied to dispute the Two-Month Notice in November 2022. The Tenant questioned why the Landlord did not provide this additional information to them when they issued the Two-Month Notice.

They stated that they were currently living with an acquaintance as of the date of this hearing, though their personal items remained in the rental unit until March 31, 2023 when they would completely vacate from the rental unit.

The Tenant provided evidence of their text message discussions with the Landlord from 2022. The Tenant submitted this shows the Landlord was looking for more rent only and needing the place for "others". This was discussion with the Landlord in September 2022, with the Tenant

offering extra money for rent so they could stay beyond the end of the current agreement. By September 14, the Landlord stated they were “moving forward with the original plan” with a family friend who was interested.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The *Act* s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss a tenant’s Application or uphold a landlord’s notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

I find there is sufficient evidence to show the Landlord’s own need for the rental unit. This includes actual needs for space because of the number of family members living in the home, and I find these needs are legitimate. In sum, the Landlord is not prevented from ending the tenancy for this reason.

The Tenant loosely provided this is a situation of bad faith with the Landlord wanting more money to continue the tenancy. I do see the Tenant as offering more money in September 2022 which doesn’t appear forced or demanded by the Landlord as a condition for a continuation of the tenancy. Nowhere is this revealed to be a demand from the landlord, nor is there any messaging that shows the landlord intended at any point to end the tenancy for this reason.

The Tenant did not provide testimony or other evidence to show there was any communication with the Landlord that undermines the Landlord’s stated intention on their need for the unit.

There is no evidence from the Tenant that outweighs that of the Landlord regarding the Landlord’s stated intention. There is no information that runs counter to the Landlord’s description of their early thoughts about their need for the rental unit in 2020. There is no evidence to show the landlord made other indications to the tenant regarding the need for the

rental unit. Without such evidence of conflicting messages or other communication, there are no indications that show the issuance of the Two-Month Notice was done in bad faith.

For these reasons, I uphold the Two-Month Notice issued on November 13, 2022 and find it was issued in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the Landlord is entitled to an order of possession on the effective date.

The tenancy shall end with service of the Order of Possession. Because the Tenant is not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective **March 31, 2023**. The Landlord must serve this Order of Possession on the Tenant if necessary. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 28, 2023

Residential Tenancy Branch