



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The Tenant stated that in February of 2023 the Dispute Resolution Package was sent to the Landlords, via registered mail. The female Landlord stated that these documents were received and have been viewed by both Landlords. On the basis of this testimony, I find that the documents have been sufficiently served to the Landlords.

The Tenant submitted evidence to the Residential Tenancy Branch on various occasions. The Tenant stated that none of this evidence was served to the Landlords. As the evidence was not served to the Landlords, it was not accepted as evidence for these proceedings.

On May 22, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the Tenant, via registered mail, on May 17, 2023. The Tenant acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of the male Landlord, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of the male Landlord, affirmed they would not record any portion of these proceedings.

As the male Landlord joined the teleconference late, I inadvertently neglected to affirm his testimony. I find that my failure to affirm his testimony does not render his testimony less reliable.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The male Landlord stated that this tenancy began in 2017 and the Tenant stated that it began in 2016.

The Assistant to the Landlord stated that a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 30, 2023, was mailed to the Tenant on January 30, 2023. The Tenant acknowledged receipt of this Notice.

Neither party submitted a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property to the Residential Tenancy Branch.

The Tenant stated that she has a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, and that it:

- Names the Landlord and the Tenant;
- Is signed and dated by the Landlord;
- Declares that the rental unit must be vacated by January 30, 2023; and
- Declares that the rental unit will be occupied by the Landlords' child.

The Assistant to the Landlord stated that the Landlords do not have a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property with them, however they agree that the Tenant has accurately described that document.

The Assistant to the Landlord, who is the Landlords' daughter, stated that:

- The Two Month Notice to End Tenancy for Landlord's Use of Property was served because she intends to move into the rental unit;
- She still intends to move into the rental unit;
- The emails sent to the Tenant on February 01, 2023 helps to establish that she intends to move into the unit;
- The text message sent to the Tenant on January 30, 2023 helps to establish that she intends to move into the unit;
- She currently lives with her parent;
- She became a lawyer a few months ago;
- She has a long-term partner and she intends to occupy with rental unit with him;
- She wants to “start her own life”;
- The Landlords always intended that she would live in the unit at some point; and
- If the Landlords are granted an Order of Possession, the Landlords would like it to be effective on June 30, 2023.

The Tenant stated that:

- The Landlord increased the rent by 1.5% in January of 2022;
- In July of 2022 the Landlord asked to increase the rent from \$2,131.00 to \$2,500.00;
- She did not agree to pay rent of \$2,500.00;
- She subsequently agreed to pay rent of \$2,400.00, beginning September 01, 2022;
- The male Landlord has told her he is having financial difficulties;
- She believes the Landlord wishes to re-rent the unit for increased rent;
- The female Landlord told her that the Landlords’ daughter was having mental health issues and could no longer reside with the Landlords.

The male Landlord stated that he has never told the Tenant he is having financial difficulties.

The female Landlord stated that she has never told the Tenant that her daughter cannot live with them because the daughter has mental health issues.

Analysis

Section 49(3) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on January 30, 2023 a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 30, 2023, was mailed to the Tenant, which declares the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*.

On the basis of the undisputed testimony of the Tenant, I find that the aforementioned Two Month Notice to End Tenancy for Landlord's Use of Property complies with section 52 of the *Act*.

On the basis of the testimony of the Assistant to the Landlord, I find that she is the Landlords' daughter, that the Two Month Notice to End Tenancy for Landlord's Use of Property was served because the Assistant intends to move into the rental unit, and that the Assistant still intends to move into the rental unit. I find that the testimony of the Assistant was consistent and forthright, and I have no reason to discount that testimony.

I find that the emails exchanged between the parties on February 01, 2023 corroborate, to some degree, the submission that the Landlords' daughter intends to move into the rental unit. More importantly, I find they suggest that the Landlords are treating the Tenant with compassion and that they understand the impact ending the tenancy has on the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that the male Landlord told her he was having financial difficulties. In reaching this decision, I was heavily influenced by the male Landlord's testimony that he did not provide this information to the Tenant. As the Landlord denies making this statement, I find it does not help to establish the Two Month Notice to End Tenancy for Landlord's Use of Property was served in "bad faith".

I find that the Tenant has submitted insufficient evidence to establish that the female Landlord told her the Landlord's daughter could not continue to live with them because she was having mental health issues. Even if this submission were true, I find it would not establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in "bad faith".

Even if I accepted the Tenant's submission that the parties mutually agreed to increase the rent from \$2,131.00 to \$2,400.00, beginning in September of 2022, I would not conclude that this establishes the Two Month Notice to End Tenancy for Landlord's Use

of Property was served in “bad faith”. As the Two Month Notice to End Tenancy for Landlord's Use of Property was served more than five months after the parties agreed to the rent increase, I find that they are not sufficiently related to support a finding that the establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in “bad faith”.

As I am satisfied that the Landlords’ daughter intends, in good faith, to move into the unit, I find that the Landlords have grounds to end this tenancy pursuant to section 49(3) of the *Act*. I therefore dismiss the Tenant’s application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property.

As the application to cancel the Two Month Notice to End Tenancy for Landlord's Use has been dismissed and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant’s application is without merit, and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession **that is effective on June 30, 2023**. This Order may be served on the Tenant. The Tenant is obligated to vacate the rental unit on June 30, 2023. In the event the Tenant does not vacate the rental unit as required, the Order may be filed with the Supreme Court of British Columbia and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 30, 2023

Residential Tenancy Branch