



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

On February 24, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 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") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 27, 2023, the Tenant amended her Application to dispute two more Two Month Notices to End Tenancy for Landlord's Use of Property pursuant to Section 49 of the *Act*.

Both the Tenant and the Landlord attended the hearing. 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.

Service of the Notice of Hearing package, amendment, and the parties' respective documentary evidence was discussed, and there were no issues with service. As such, all parties' evidence was accepted and considered when rendering this Decision.

All parties 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.

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*.

Issue(s) to be Decided

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

Background and Evidence

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.

The Landlord "believed" that the tenancy started on or around October 1, 2016; however, the Tenant was of the understanding that it started on September 15, 2015. Regardless, both parties agreed that rent was established at an amount of \$1,435.00 per month, and that it was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid. A copy of a signed tenancy agreement was not submitted as documentary evidence for consideration as one was never created by the Landlord as required by the *Act*.

The Landlord advised that a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 19, 2023, was left on the Tenant's counter on February 18, 2023. She then testified that she served two more Two Month Notices to End Tenancy for Landlord's Use of Property dated March 13, 2023, and March 15, 2023, by registered mail on those respective dates. The Tenant clearly received these as she disputed them within the required legislated timeframes. The reason the Landlord served the Notices 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 indicated that it would be "The landlord or landlord's spouse" that would specifically be occupying the rental unit. The effective end date of the tenancy was noted as April 30, 2023, May 31, 2023, and May 31, 2023, on the respective Notices.

The Tenant advised that she was moving out by the end of June 2023, and she was asked if she wanted to settle the matters pertaining to the Notices. She was cautioned of the outcomes if the Notices were determined to be invalid and cancelled. However, she was adamant that she wanted to proceed as she wanted it documented that the Landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 19, 2023, in a manner that was contrary to the *Act*. While she was repeatedly informed that this method of service was not permitted under the *Act*, it did not change the fact that she received it and disputed it on time. She was afforded with multiple opportunities to explain why service of this Notice was prejudicial to her, but she could not provide any reasons why it would be unfair to proceed. Again, it should be noted that the Tenant wished to proceed with this hearing and the cancellation of the Notices rather than attempt to settle the matter with the Landlord. The Landlord was cautioned that service of documents in the manner that she did so was a breach of the *Act*, and contrary to all the manners with which she could serve a document pursuant to Section 88.

The Landlord referenced her documentary evidence with respect to her intention to occupy the rental unit and stated that due to her "fiduciary obligations" in a nearby area, it would be easier for her to live in the rental unit. She testified that her plan was to move by May 31, 2023, that she will rent a trailer, that she has movers "on hold", and that she will move her furniture. As well, she indicated that she would have contractors set up to paint the rental unit prior to moving in. She stated that she has transferred the utility accounts already. She then testified that she owns a property in Burnaby, that is her primary residence, and that she will be going back and forth from Burnaby to the rental unit until she decides to retire. She advised that she intends to use the rental unit sporadically, when convenient for her and her business needs.

The Tenant advised that this was a family dispute, that it is her belief that the Landlord will not sell her Burnaby property, and that it is her belief that the Landlord will not live in the rental unit.

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 the 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.

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.

I also find it important to note that 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.

As well, this policy guideline stipulates the following with respect to the six-month occupancy requirement: "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

When reviewing the totality of the evidence and testimony before me, I find it important to note that the intention of this Section of the *Act* is to allow a Landlord to use the property for the stated purpose, not to displace a Tenant for a purpose that partially meets the reason chosen on the Notices. While the Landlord attempted to suggest that she was permitted to use the rental unit occasionally, I reject this position. Clearly, the policy guideline indicates that the Landlord must live in the rental unit for a duration of at least six months. Given that the Landlord acknowledged that she had another home that was her primary residence, that she would only be using the rental unit when convenient until she ultimately decided to retire, and that she would then figure out what to do with her properties, I am satisfied that the Landlord had no intention of living in the rental unit for at least six months after the effective date of the Notices.

Based on my assessment of the undisputed evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord served these Notices in good faith. As such, I find that the Notices dated February 19, 2023, March 13, 2023, and March 15, 2023, are cancelled and of no force and effect.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent in satisfaction of this debt outstanding.

Conclusion

Based on the above, I hereby order that the Two Month Notices to End Tenancy for Landlord's Use of Property dated February 19, 2023, March 13, 2023, and March 15, 2023, to be cancelled and of no force or effect.

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: June 20, 2023

Residential Tenancy Branch