



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OPL, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On April 14, 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").

On April 27, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 49 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with A.V. 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.

A.V. advised that the Tenant's Notice of Hearing package was served to the Landlord by registered mail on April 24, 2023, and the Landlord confirmed receipt of this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served with the Tenant's Notice of Hearing package.

She then advised that the Tenant's evidence package was served to the Landlord by registered mail on June 30, 2023, and that this package was returned to sender (the registered mail tracking number is noted on the first page of this Decision). As well, she indicated that the Tenant's additional, late evidence was not served to the Landlord. The Landlord stated that he did not receive a notification from Canada Post about this evidence package; however, he then contradictorily stated that he never went to pick up any packages as there was "no point" because he thought any mail was "for a different hearing." Based on the evidence submitted of this evidence package being sent by registered mail to the Landlord, I am satisfied that the Landlord was deemed to have received the Tenant's documentary evidence five days after it was mailed. As such, I have accepted the Tenant's documentary evidence, and will consider it when rendering this Decision. However, as the Tenant's additional, late evidence was not served to the Landlord, I have excluded this additional evidence, and will not consider it when rendering this Decision.

The Landlord advised that he served his evidence, in response to the Tenant's Application, to the Tenant by hand on January 10, 2023, and by email on January 11, 2023. The Tenant and A.V. confirmed receipt of this evidence. Based on this undisputed testimony, I have accepted the Landlord's documentary evidence and will consider it when rendering this Decision.

The Landlord then advised that he "possibly" served his Notice of Hearing package to the Tenant by placing it her mailbox on May 2, 2023, and that he "believed" his evidence was served to the Tenant on July 10 or 11, 2023, but he was not entirely sure if he did this. It appeared as if this uncertainty was due to him being involved in at least one other Dispute Resolution Proceeding, and he was getting the various documents mixed up. The Tenant testified that she did not receive anything in her mailbox, and that she "possibly" received the Landlord's evidence. Given the uncertainty of the Landlord's testimony, I am not satisfied that his Notice of Hearing or evidence package was adequately served to the Tenant. As such, I have dismissed the Landlord's Application without leave to reapply. Moreover, I have excluded this evidence submitted on his file, and will not consider it 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 Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

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.

All parties agreed that the tenancy started on June 1, 2019, that rent was currently established at an amount of \$1,750.00 per month, and that it was due on the first day of each month. A security deposit of \$770.00 and a pet damage deposit of \$770.00 were also paid. A partial copy of the tenancy agreement was submitted by the Tenant as documentary evidence for consideration.

All parties also agreed that the Notice was served to the Tenant by placing it in her mailbox on March 30, 2023. The Tenant clearly received this Notice as she indicated as much and disputed it on April 14, 2023. The reason the Landlord served the Notice is because it would specifically be "The landlord or the landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted as June 1, 2023, on the Notice.

The parties were informed that the burden of proof, when this type of Notice is disputed, rests with the Landlord who issued the Notice to substantiate that the rental unit will be used for the stated purpose. As such, they were apprised that the Landlord would have

the opportunity to make submissions first, and then when the Landlord was done, the Tenant would have an opportunity to respond.

The Landlord testified that he had been living with his girlfriend in March 2023, but this relationship faltered, and he was in need of a residence to live at. He stated that he asked his parents in late March 2023 if he could move in with them, into his old room, until he could move back into the rental unit. He testified that he moved back in with his parents in mid-March 2023. A partial copy of a tenancy agreement between him and his father was submitted as documentary evidence to support this position. As well, he advised that he intended to renovate a separate space on the property, and by living in the rental unit, he would be closer to it so it would be easier for him to complete this work.

A.V. advised that the Landlord did not intend to occupy the rental unit as a primary residence, but he would inhabit it “nominally” for the minimum required timeframe before he would then re-rent it out. She referenced a letter dated June 26, 2023, that was authored by the Landlord where the Landlord stated that he would like the six-month timeframe, that he would be required to use the property, to start right from the effective date of the Notice. In addition, she highlighted that the Landlord specifically stated in this letter, “before I rent it out again.” It is her position that the Landlord’s intention is to use the property for the minimum amount of time allowable under the *Act* and that this Notice was served in bad faith.

She then read from a statement that the Landlord sent the Tenant where he indicated that he was contemplating getting a roommate to live with him to rent a room in the rental unit when he obtained vacant possession. As well, he also reiterated that he wanted the six-month timeframe for being required to use the property to start right from the effective date of the Notice. It is her position that the Landlord’s statement clearly indicates that it is not his intention to occupy the rental unit for his own use solely and that he is attempting to use the property for as little time as possible under the *Act* before he rents it to another person. This is contrary to serving the Notice in good faith.

The Landlord confirmed the contents that he wrote in this statement. As well, he acknowledged that his project would possibly take six to eight months to complete and that it is easier to accomplish if he is living 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. In addition, this Section of the *Act* outlines below what would be defined as a close family member that would be permitted to occupy the rental unit:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

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, as highlighted above, that the burden of proof lies on the Landlord who issued the Notice, to provide sufficient evidence, over and above their testimony, 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.

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may need to 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 and testimony before me, I acknowledge that the Landlord could have experienced some personal difficulties in his relationship resulting in having to find alternate accommodations, and that serving the Notice would be a reasonable course of action. However, I find it important to note that he testified that this relationship dissolved in March 2023 and that he then moved back in with his parents that same month. Despite this testimony, I note that he submitted a copy of his tenancy agreement with his father which was signed on May 5, 2023, to start on June 1, 2023. If this tenancy started in March 2023, it is unclear to me why this tenancy agreement was drafted months later, to begin June 1, 2023. This inconsistency causes me to doubt the reliability of the Landlord's testimony.

Moreover, when I consider this contradictory evidence in conjunction with the consistent evidence of the Landlord wanting the six-month timeframe to end as quickly as possible, I find that this causes me to question further whether the Landlord truly had the good faith intention to use the property for the stated purpose. Considering the evidence and testimony in their totality, I do not find that the Landlord provided consistent, logical testimony that was supported with documentary evidence.

Based on all the above doubts I have with the Landlord's submissions, I am satisfied, on a balance of probabilities, that the Landlord did not serve this Notice in good faith on March 30, 2023. I find it more likely than not that this Notice was served in an effort to displace a Tenant that he was having a tenuous relationship with, and that a possible false narrative was then created of needing to move into the rental unit, which conveniently fit the grounds for ending the tenancy. In addition, given that the Landlord was so adamant about only having to use the property for the minimum amount of time, I am satisfied that this supports a finding that the Landlord had an ulterior motive when serving the Notice, and his goal was to re-rent the unit as soon as legally possible.

Ultimately, I find that the Notice dated March 30, 2023, is cancelled and of no force and effect.

As the Landlord's Application was dismissed, I find that the Landlord is not entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 30, 2023, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Landlord's Application is dismissed without leave to reapply.

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: July 28, 2023

Residential Tenancy Branch