



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

1st Application: CNL, OLC

2nd Application: CNC

Introduction

On April 28, 2023, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice");
- b. for the Landlord's compliance with the legislation and/or tenancy agreement.

On May 5, 2023, they submitted a second Application:

- c. to dispute the One Month Notice to End Tenancy for Cause (the "One-Month Notice");

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on August 18, 2023. Both parties attended the teleconference hearing.

The Landlord confirmed they received each Notice of Dispute Resolution Proceeding, as well as the Tenant's evidence in this matter. The Landlord did not provide documentary evidence for this hearing. I informed both parties at the outset of the hearing that their statements in the hearing were testimony and recorded as evidence in this legal proceeding.

Issues to be Decided

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

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Background and Evidence

I have reviewed all evidence and submissions before me. In this decision, I set out only the evidence and submissions relevant to my conclusion and the outcome of this hearing.

In the hearing, the Tenant described the tenancy agreement they had in place with the Landlord, and the Landlord confirmed what they heard as accurate. The Tenant described the tenancy starting around 4 years ago, in spring 2019. This was a verbal tenancy agreement. Originally, they rented a room in the rental unit property from the Landlord, at \$500 per month. The Landlord presented the idea to the Tenant of the Tenant moving downstairs into the basement, for \$700 per month, within the first year after the tenancy started. The Tenant accepted this offer, and paid the Landlord a \$350 security deposit and paid \$700 in monthly rent thereafter.

The Landlord served the Two-Month Notice on April 27, 2023. A copy of this is in the Tenant's evidence. This set the end-of-tenancy date, on which the Tenant must move out, as June 30, 2023. Page 2 of the document shows the Landlord's indication that "The landlord or the landlord's spouse" will occupy the rental unit.

The Landlord in the hearing presented that they intended to use the rental unit basement for themselves. They were, as of the date of this hearing, searching for exercise equipment for the intention to use that equipment in the rental unit space. This would be a "rec room", as part of their existing home in the upstairs portion of the rental unit property.

As disclosed in the hearing, the Landlord stated they had health issues, and the "just want [their] home back." The Landlord stated they thought the Tenant was overall "very good", and they did not raise the rent every year because of their good relationship with the Tenant, whom they treated "like family".

The Landlord, in a summary statement, said it was not their intention to live in the basement as a separate living space; rather, they want to expand their current home.

The Tenant prepared a statutory declaration for this hearing, dated August 2, 2023. On the matter of the Two-Month Notice, the Tenant made the following points:

- “When [the Landlord] served me with the Two Month Notice, she told me she wanted to reduce the number of tenants living in the House and move into the Basement Apartment herself.”
- the Landlord’s living space upstairs is “nicely furnished compared to the Basement Apartment”, with a kitchen, dining room and living room with a wood fireplace. There are three bedrooms and one bathroom.
- compared to the upstairs living space, the basement is small, with a very basic kitchen.
- there is no reason for the Landlord to need the basement rental unit, in addition to the upstairs rooms
- on April 29, 2023, in conversation with the Landlord, the Tenant asked the Landlord if they were going to live in the rental unit – the Landlord responded by saying “I don’t want anybody in there.” The Tenant provided a recording of this as evidence in this hearing.
- On April 2, 2023, the Landlord and their acquaintance were in the basement rental unit, and the Landlord’s acquaintance commented to the Landlord that the amount of rent the Tenant paid was “very cheap for the place.” “[The Landlord’s acquaintance] appeared to be implying that [the Landlord] could get more rent for the Basement Apartment.”
- via text, the Landlord asked the Tenant directly if they were going to leave the rental unit by the end of May. According to the Tenant: “I believe [the Landlord] was trying to get me to leave the unit as soon as possible so [the Landlord] could re-rent.”
- via text message on three separate occasions, the Landlord complained that the Tenant used too much electricity and gas. The Tenant: “I believe this may be another reason for the eviction.”

In the hearing, the Tenant presented the same points, as reasons for their belief that the Landlord had an ulterior motive for ending the tenancy in this way. The Tenant connected the Landlord continuing to accept only \$700 as rent from the Tenant with the Landlord’s motive to raise the rent by having new tenants in the rental unit. The fact that the Landlord was seeking

to increase the amount of utilities they charged to the Tenant was also a motivation for more additional rent from new tenants in the rental unit.

Analysis

The Act s. 49(3) allows a landlord to end a tenancy, “if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.” As the Tenant identified in the hearing, the burden of proof in this hearing is on the Landlord.

In this dispute the Landlord issued the Two-Month Notice to the Tenant on April 24, 2023. The Tenant challenged the Two-Month Notice formally through their Application to the Residential Tenancy Branch on April 28, 2023.

I find the Landlord, in the hearing, provided sufficient information on their intention to use the rental unit property as part of their existing home that is the upstairs part of the rental unit property. I find it logical that the Landlord wants the additional space available to them as part of their existing home.

The Tenant did not provide sufficient evidence to show the Landlord was not issuing the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence of an ulterior motive from the Landlord, primarily to rent out the rental unit space for a higher amount of rent to new tenants.

I find the following on specific points raised by the Tenant:

- Though the Tenant captured the Landlord’s statement that they “don’t want anybody in there” on a recording, I find this confirms the Landlord’s intention to not have any new tenants in the rental unit. I find this confirms the Landlord’s intention to use the rental unit as part of their existing home, with no other tenants residing in that basement part of the rental unit property.
- I find it speculative on the part of the Tenant that the Landlord’s acquaintance’s statement confirms the Landlord’s desire to end the current tenancy with the Tenant and have new renters in for an increased amount of rent. To state it plainly: the Landlord’s acquaintance’s statement – either on its own or in combination with the other points raised by the Tenant – does not prove an ulterior motive of the Landlord to end this tenancy in order to re-rent the rental unit. I contrast this submission, which I find

speculative, with the Landlord's testimony in the hearing that they intend to have that rental unit space as part of their existing home.

- The point raised by the Tenant about the Landlord's query on a possible earlier move-out by the Tenant is based on their belief only. That is not firm evidence in the form of a direct statement from the Landlord, that they were ensuring the Tenant left earlier in order to re-rent. This is an isolated query from the Landlord that seems perfectly reasonable in the circumstances where the Landlord would naturally want to plan ahead for their own use of the rental unit space. Again, I find the Tenant's submission here is mere conjecture.
- The Tenant also stated "I believe [the Landlord's query on utility usage] may be another reason for the eviction." I find this is also speculative, and there is not even a tenuous link between this inquiry by the Landlord and their need for the rental unit space. Again, the Tenant is speculating based on an entirely separate question from the Landlord about day-to-day living expenses. I find it perfectly reasonable that the Landlord would make such an inquiry, completely unrelated to their need for the rental unit space.

In summary, I find there is nothing presented by the evidence here that offsets the Landlord's direct testimony that they want the rental unit space to be part of their own home. This entails, as stated to the Tenant in the Tenant's own evidence, that no other person would be living in the rental unit. I find the Landlord has overcome the burden of proof in this matter, by their statements in the hearing. The speculation and belief of the Tenant does not outweigh the direct testimony of the Landlord in the hearing.

For these reasons, I dismiss the Tenant's Application for cancellation of the Two-Month Notice, and the tenancy is ending.

Under s. 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession. On my review, I find the Two-Month Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

Given that the tenancy is ending by reason of the Two-Month Notice, the validity of the separate One-Month Notice issued by the Landlord is not at issue. I order that document cancelled in its entirety. I dismiss the Tenant's second Application because the tenancy is ending for the reason of the Landlord's own use of the rental unit. Additionally, the Landlord's

compliance with the *Act* and/or tenancy agreement is no longer at issue; therefore, I cancel that part of the Tenant's Application.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the Two-Month Notice, without leave to reapply. I dismiss the other grounds on their first Application, without leave to reapply. As stated above, I dismiss the Tenant's second Application in its entirety, without leave to reapply.

I grant an Order of Possession to the Landlord, effective TWO DAYS after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 23, 2023

Residential Tenancy Branch