



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code CNL, OPT, MNDCT, DRI, OLC, FFT

Introduction

This hearing was scheduled pursuant to an Application for Dispute Resolution filed by the Tenant on May 3, 2023. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 1, 2023 (the Two Month Notice);
- an order of possession;
- an order granting compensation for monetary loss or other money owed;
- an order with respect to a disputed rent increase;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was assisted by RT. Although the Tenant had three witnesses present, they were excused from the hearing and their testimony was not required. The Landlords attended the hearing and were assisted by BG. All in attendance provided a solemn affirmation.

The Tenant testified she served the Notice of Dispute Resolution Proceeding package on the Landlords by registered mail on May 12, 2023. The Tenant confirmed that two additional packages were served on the Landlords by registered mail. On behalf of the Landlords, BG acknowledged receipt of these packages on May 15, August 2, and August 8, 2023, respectively. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

On behalf of the Landlords, BG testified the Tenant was served with the Landlords' evidence by leaving a copy at the Tenant's door on August 23, 2022. The Tenant testified that she did not receive this evidence until August 26, 2022, five days before the hearing. As the Landlords' documentary evidence was not served on and received

by the Tenant on time in accordance with Rule of Procedure 3.15, and had ample time to do so, I have not considered the documentary evidence in coming to a decision.

Further, Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issues to address are whether or not the tenancy will continue based on the evidence provided by the Landlords in support of the Two Month Notice. Other of the Tenant's claims are monetary (MNDCT, DRI), and are related to the Landlord's compliance with relevant legislation (OLC). Therefore, I find these issues are unrelated to the Tenant's request for an order cancelling the Two Month Notice. As a result, I exercise my discretion to dismiss all but the Tenant's requests for an order cancelling the Two Month Notice, for an order of possession, and for recovery of the filing fee. The remainder of the relief sought is dismissed with leave to reapply.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order an order cancelling the Two Month Notice?
2. Is the Tenant entitled to an order of possession?
3. Is the Tenant entitled to recovery the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 1, 2022. Rent of \$1,000.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$350.00, which the Landlord holds.

The parties agreed that the Two Month Notice was served on the Tenant in person on May 1, 2023. The effective date of the Two Month Notice is stated to be July 31, 2023.

The Two Month Notice was issued on the basis that the rental unit will be occupied by PT, the son of CT. BG stated that PT has a degenerative vision condition. He has undergone a total of seven cornea transplant surgeries, but all have been rejected. The Landlords issued the Two Month Notice because the family recognized PT was

struggling. The family recognized a need to make arrangements, knowing that vision loss was inevitable.

PT agreed with the testimony of BG and testified that he intends to move into the rental unit as soon as possible.

The Tenant testified that there was a flood that originated in her rental unit on January 16, 2023. The flood caused damage and the Landlords were upset. The Tenant testified that BG called on January 31, 2023, and told the Tenant she could stay if she paid the Landlords' insurance deductible. The Tenant also noted that the flooding was not her fault as the plumber had to replace the toilet.

The Tenant testified that she knows PT and that he never mentioned a diagnosis. The Tenant doubts the testimony regarding PT's condition. Rather, the Tenant suggested the Two Month Notice was issued as a reaction to the flooding.

The Tenant also testified there were rent increases which exceeded the amount permitted under the Act. She testified that she "felt intimidated, harassed, and bullied" by text messages from PT, copies of which were submitted into evidence.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act confirms 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.

In this case, I find it is more likely than not that PT intends to move into the rental unit. Although I accept that the flood in the Tenant's rental unit resulted in some dispute, I find there is insufficient evidence before me to find that the Landlords did not act in good faith when they issued the Two Month Notice. Further, I note that a medical condition is not a prerequisite to ending a tenancy on this basis. However, I accept that PT has a degenerative condition and that multiple transplant surgeries have not been effective. I accept that the Landlords intend for PT to move into the rental unit to support his anticipated vision loss.

Considering the above, I find that the Tenant's request to cancel the Two Month Notice is dismissed without leave to reapply. As a result, I also dismiss the Tenant's request for an order of possession and the Tenant's request to recover the filing fee, without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. I have reviewed the Two Month Notice and find it complies with section 52 of the Act. Therefore, I grant the Landlord an order of possession. As it is past the effective date of the Two Month Notice, the order of possession will be effective two days after it is served on the Tenant.

Conclusion

The Tenant's requests for an order granting compensation for monetary loss or other money owed, an order with respect to a disputed rent increase, and an order that the Landlord comply with the Act, Regulation and/or the tenancy agreement are dismissed with leave to reapply.

The Tenant's requests for an order cancelling the Two Month Notice, for an order of possession, and to recover the filing fee are dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: September 1, 2023

Residential Tenancy Branch