



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, RR, PSF, LRE, LAT, OLC, FFT
CNR, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning two applications made by the tenant which have been joined to be heard together. In the first application the tenant has applied for:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order permitting the tenant to change the locks to the rental unit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

In the second application, the tenant has applied for:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which specify that multiple applications contained in a single application must be related, and I found that the primary applications refer to notices to end the tenancy and the hearing focused on those issues. The balance of the tenant's application is dismissed with leave to reapply.

The landlord submitted that the parties have exchanged all of their evidence. The tenant did not dispute that, and therefore, all evidence of the parties has been reviewed, and the evidence I find relevant to the remaining issues is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?
- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2017 and reverted to a month-to-month tenancy after July 31, 2018; the tenant still resides in the rental unit. There is a written tenancy agreement, however none has been provided for this hearing. The landlord testified that rent in the amount of \$2,000.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 3 bedroom single family house.

The landlord further testified that on May 29, 2024 the landlord personally served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Two Month Notice). The landlord has provided pages 1 and 2 only of the 4-page form and testified that all pages were served to the tenant. It is dated May 29, 2024 and contains an effective date of vacancy of July 31, 2024. The reason for issuing it states: 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), specifying the child of the landlord or landlord's spouse.

The landlord's son currently resides in a cottage behind the landlord's residence, and he will be occupying the rental unit. The landlord mentioned to the tenant in February,

2024 that the landlord was contemplating that. The landlord was planning to sell his home, which was listed for sale 3 days ago. The landlord has also built a house in another community and has staged and cleaned his current home for selling, and the cottage will not be available for the landlord's son. The tenant told the landlord that the tenant wanted to stay until December, but that doesn't work for the landlord's timeline or that of his son.

The landlord also owns a house next door to the rental unit, which is occupied by the landlord's daughter and another suite is rented.

The landlord also has 2 younger children, and the family will be in the other newly built house for the summer, and since the landlord works in his current community, he will stay in his own home from time-to-time until it sells. The landlord is a realtor and is hoping to retire in the new community.

The landlord also testified that on June 11, 2024 the landlord served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the Notice has been provided for this hearing, and it is dated June 11, 2024 and contains an effective date of vacancy of June 24, 2024 for unpaid rent in the amount of \$2,000.00 that was due on June 1, 2024. The tenant has not paid rent for June or July, 2024 and owes \$1,000.00 for a previous month, which the tenant withheld 4 years ago. The landlord hasn't chased him for it. However, total arrears of rent amount to \$5,000.000.

The tenant testified that he has attempted many discussions with the landlord about staying in the rental home and the landlord said he would let the tenant stay until the landlord re-developed the 2 lots that are side-by-side. Friends next door had a similar experience with the same landlord, and the tenant saw the landlord renovating for another party to move in. The landlord took the tenant there and asked if the tenant wanted to move there so the landlord could renovate the tenant's rental unit. Then he said he wanted his son to move into the tenant's rental unit.

Repairs need to be done and water damage still hasn't been addressed. The tenant withdrew the security deposit of \$1,000.00 due to the landlord's failure to fix the roof, which the tenant repaired. It fell on the tenant twice.

The landlord gave the tenant his word that the tenant could stay; the tenant has lived there for 7 ½ years without any problems except the roof leaking and the work that the tenant has done. Plywood has been on the roof for 5 years, and the landlord has made no effort to fix it. The parties had a conversation that the landlord wanted to get into the rental unit to renovate and move his son in. The tenant has provided a copy of all 4

pages of the Two Month Notice to End Tenancy For Landlord's Use of Property for this hearing.

The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities came after the tenant had applied for an order cancelling the Two Month Notice. The tenant has provided a copy of the Notice for this hearing. The landlord has backed the tenant into a corner. The tenant believes that the landlord has gotten away with things prior, and this is the first time he's been challenged.

SUBMISSIONS OF THE LANDLORD:

The landlord is looking to have his rights upheld having given proper notice for the landlord's use of the property.

SUBMISSIONS OF THE TENANT:

The tenant hopes to resolve this, and the parties can make an agreement about monetary payment. The tenant doesn't have the money at the moment to move out.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Two Month Notice) the landlord must demonstrate good faith intent to accomplish the reason for ending the tenancy within a reasonable time after the effective date of the Notice.

The Two Month Notice was issued first, personally delivered to the tenant on May 29, 2024. I have reviewed the copy provided by the tenant, and I find that it is in the approved form and contains information required by the *Act*.

The defence to it raised by the tenant is that the landlord told the tenant that the tenant could stay until the landlord re-developed the 2 lots. The tenant also testified that friends who lived next door had a similar experience with the same landlord, but has not provided any evidence to support that and has not described any circumstances surrounding that.

Considering the landlord's undisputed testimony that his current home is up for sale, the landlord's son is currently residing in a cottage house on that property, the landlord has a newly built house in another community to move to, and the landlord has staged and cleaned his current residence for sale, I find that the landlord has established good faith intent to accomplish the stated purpose for ending the tenancy.

As a result, I dismiss the tenant's application to cancel the Two Month Notice. The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord effective at 1:00 p.m. on July 31, 2024, the effective date contained in the Notice. The tenant must be served with the order of possession, which may be filed for enforcement in the Supreme Court of British Columbia.

With respect to the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the 10 Day Notice), I have reviewed it and I find that it is in the approved form and contains information required by the *Act*.

The tenant testified that he "took back" the security deposit. A tenant may not "take back" a security deposit. I find that the landlord has established that the tenant owes \$1,000.00 in back rent. I also accept the undisputed testimony of the landlord that the tenant has not paid any rent for June or July, 2024 and is currently in arrears an additional \$4,000.00. Therefore, I find that the landlord has established that the 10 Day Notice was given in accordance with the law, and I dismiss the tenant's application to cancel it.

The law further specifies that where I dismiss a tenant's application to cancel a 10 Day Notice, I must grant a monetary order for the unpaid rent in favour of the landlord.

However, where a landlord gives a Two Month Notice, the landlord is obligated to provide the tenant with compensation equivalent to 1 month's rent payable under the tenancy agreement, which I find is \$2,000.00.

Since the Two Month Notice was issued first, and having ordered that the landlord is entitled to an order of possession effective at 1:00 p.m. on July 31, 2024, I order that the tenant pay the landlord the back rent of \$1,000.00 and June's rent of \$2,000.00, and that no rent is payable for July, 2024, as compensation required under the law.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$3,000.00. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since the tenant has not been successful with the application the tenant is not entitled to recover either of the filing fees from the landlord.

The landlord currently holds a security deposit in the amount of \$1,000.00, and I order that the parties deal with the security deposit in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a Two Month Notice to End Tenancy For Landlord's Use of Property is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on July 31, 2024 and the tenancy will end at that time.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,000.00.

The tenant's applications to recover filing fees from the landlord are hereby dismissed without leave to reapply.

I order the parties to comply with the *Residential Tenancy Act* with respect to the security deposit held in trust by the landlord.

The balance of the tenant's applications is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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 05, 2024

Residential Tenancy Branch