



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL LAT AS LRE OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49; an order requiring the landlord to comply with the *Act* pursuant to section 62; an order to set conditions on the landlord's right to enter the rental unit and to change the locks to the rental unit pursuant to section 70; as well as an order allowing the tenant to assign or sublet the rental unit pursuant to section 65.

Both parties attended this hearing. The tenant was self-represented and the landlord was assisted by his son during the hearing. Another son provided witness testimony. Both parties acknowledged the other's evidentiary materials for this hearing. The tenant acknowledged receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") on October 9, 2017 (3 days after it was posted on the tenant's door). The landlord acknowledged receipt of the tenant's Application for Dispute Resolution package on or about October 20, 2017.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

If the tenancy continues, is the tenant entitled to any of the following orders:

- an order requiring the landlord to comply with the *Act*?
- an order to set conditions on the landlord's right to enter the rental unit and/or to change the locks to the rental unit?
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

Background and Evidence

This tenancy began on June 2013. The parties were unclear as to the term and type of term of the tenancy: neither party could provide a start date of the tenancy. The parties disagreed as to whether the tenancy was a month to month or a fixed term tenancy. The landlord testified that this tenancy is a month to month tenancy. The tenant testified that this tenancy has consisted of several fixed term tenancies. He relied on an unsigned tenancy agreement submitted for this hearing that states the tenancy ends on July 2018. Both parties agreed that, at the outset of this tenancy, no written tenancy agreement was created.

Although at least two residential tenancy agreement documents were submitted as evidence, the parties could not agree that any of the agreements accurately represented the tenancy and neither party had signed the written agreements. The parties agree that the current rent is \$450.00 payable on the first of each month and that the tenant currently continues to reside in the rental unit.

On October 6, 2017, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on the ground that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse". The landlord's son was the landlord's assistant in this hearing. He testified that he and his brother are moving into the rental unit. His brother also testified.

The landlord's son (A) testified that he is 26 years old and was recently working in another province. Prior to working in another province, Son A testified that he had been residing with his parents in the upstairs suite. He testified that he now has a job in British Columbia and that he is enrolled in his third year towards a degree. He described the details of his programming and stated that there is extensive group work for this program. He also testified that he told his parents he wants to live on his own. He testified that the family compromise was that he would live downstairs in the rental unit.

The landlord's son (B) also testified. He stated that he is 19 years old and currently lives in the upstairs rental unit with his parents. He testified that he has just enrolled to start the same program that his brother has been doing for the last two years. He testified that he has told his parents that he wants to live on his own and taking the first steps towards living on his own with his brother was a good compromise for his parents. He testified that the location of the rental suite will work well for the two brothers, to be close to their parents and to be able to drive to school together on occasion as well as study or have study groups without disturbing their elderly parents.

The tenant argued that the 2 Month Notice has been issued in bad faith by the landlord. He testified that the landlord wants to raise the rent. He testified that the landlord has tried to raise his rent several times and use other methods to get him kicked out. The tenant provided a video where the landlord indicated that he should be paying much higher rent than he is. The tenant testified that he has put approximately \$20, 000.00 into addressing the issue of his rent. He testified that, because of his disabilities, he is not capable of moving. He testified that the landlord's attempts to get him out of the rental unit have caused him immense stress.

The tenant also testified that the landlord has entered his unit without his permission. The landlord did not dispute this testimony. Based on the testimony of all parties at this hearing, the tenant would not allow the landlord into the unit and the landlord, in frustration forced himself in. He also applied to set conditions for the landlord's entry into the unit, to change the locks, for an order that the landlord comply with the Act (by not entering the unit without notice) and to be allowed to sublet his rental unit.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 2 Month Notice to End Tenancy on October 6, 2017, the landlord claimed that; a member of his immediate family (specifically, his two sons) intended to move into the rental unit.

The landlord cannot end a tenancy that is subject to a fixed term. The tenant argued that the parties have agreed on a fixed term for his tenancy with an end in July 2018. However, in order to prove an agreement, the tenant must either show; documentary evidence of the agreement; or provide other testimony to show on a balance of probabilities that the tenant and landlord had a meeting of the minds regarding the term of this tenancy. There is, as of the date of this hearing no written tenancy agreement signed and agreed upon by both parties although at least two residential tenancy agreement documents were submitted as evidence. The parties only agree on the amount of rent with respect to this tenancy. As I have no persuasive evidence to prove that a fixed term has been agreed between the parties, I find that the tenancy will default to a month to month tenancy.

I have considered all of the circumstances of this tenancy as well as the testimony of all of the parties at this hearing. I accept the testimony of the two sons of the landlord who spoke on behalf of this application. I find that the testimony of both sons was calm, candid and consistent with each other. I find that their testimony provided a reasonable and plausible reason to have the tenancy end: that the two of them will move into the rental unit.

While I note that the landlord and tenant have acted badly towards each other, I find that the landlord is not issuing the 2 Month Notice to End Tenancy in bad faith. I find that the sons' testimony has overcome any assumption about the ulterior motives of the landlord suggested by the tenant with respect to the end of the tenancy.

I dismiss the tenant's application to cancel the Notice to End tenancy. I find that the landlord's notice to end tenancy is valid in form and content pursuant to section 52 of the Act. I award an Order of Possession to the landlord dated effective January 31, 2017, pursuant to section 55(1) of the Act,

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

With respect to the tenant's request to assign or sublet the rental unit, this portion of his application is moot. I also dismiss the tenant's application to set conditions on the landlord's entry to the unit and to change the locks, given that his tenancy will come to an end. However I issue an order that the landlord comply with the Act, as requested by the tenant. The landlord has acknowledged entering the tenant's rental unit without the tenant's permission and doing so in an aggressive manner. I remind the landlord to be aware of the provisions of the Act regarding notice to the tenant before entering the unit.

Conclusion

I order that the landlord comply with the provisions of the Act with respect to entrance to the rental unit.

I dismiss the tenant's application to cancel the Notice to End Tenancy. The tenancy shall end on January 31, 2017.

I issue the landlord a formal copy of an Order of Possession effective January 31, 2017. Should the tenant(s) fail to comply with this Order, this Order may be filed 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: January 22, 2018

Residential Tenancy Branch