



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to dispute a rent increase, request on order to repair the rental unit, request a rent reduction and to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) dated July 31, 2018. The matter was set for a conference call.

The Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. All parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters

At the outset of this hearing, the Tenant testified that the Landlords and he had resolved the matters regarding the rental increase and the required repairs to the rental unit. The Tenant testified that he wished to proceed with his request to cancel the Notice, only. The Landlords agreed to the Tenant’s request.

I am left with determining the validity of the Notice and will proceed on that matter.

Issues to be Decided

- Should the Notice dated July 31, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The Parties testified that a Notice to end tenancy was served on the Tenant on August 1, 2018, by posting it to the front door of the rental unit. The Notice indicated that the Tenant was required to vacate the rental unit by September 30, 2018. The Tenant provided a copy of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that his daughter would be moving into the rental unit.

The Tenant testified that he feels that the had issued the Notice to end the tenancy in retaliation to his application with this office to dispute a rent increase. The Tenant provided a copy of the text message history between himself and the Landlord into documentary evidence.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by the Tenant, that the Landlords served the Notice by posting it to the Tenant's door on August 3, 2018. Pursuant to section 90 of the *Act*, I find that the Tenant is deemed to have received the Landlord Notice to end the tenancy on August 6, 2018.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until August 21, 2018, to dispute the Notice. I find that the Tenant filed did dispute the Notice within the required timeline.

The Tenants' application to cancel the Notice called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

"Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy."

I find that the Tenant has not provided sufficient evidence to support his claim that the Landlords have ulterior motives in ending his tenancy. Therefore, I must accept it on good faith that the Landlords are going to use the rental property for the stated purpose on the Notice, and I dismiss the Tenants' application to cancel the Notice dated July 31, 2018.

However, If the Landlords fail to use the rental property for their stated purpose, the Tenant would be entitled to compensation pursuant to section 51 (2) of the Act.

Pursuant to section 55 of the Act, if the tenant's application is dismissed, and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. I have reviewed the Notice, and I find that the effective date on the notice is incorrect, as it did not allow for the required time for service, pursuant to section 90 of the Act.

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find that the earliest this tenancy could end, in accordance with the *Act*, is October 31, 2018.

Therefore, I find the Notice dated July 31, 2018, is valid and enforceable. I find that the Landlords are entitled to an order of possession, effective not later than 1:00 p.m. on October 31, 2018. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I dismiss the Tenant's application to cancel the Notice Dated July 31, 2018.

I grant an Order of Possession to the Landlord effective not later than 1:00 p.m. on October 31, 2018. The Tenant must be served with this Order. Should the tenant 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: September 19, 2018

Residential Tenancy Branch