



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of a landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant acknowledged receipt of the landlord's 2 Month Notice given to her in person on August 1, 2018. Both parties acknowledged receipt of each other's evidentiary packages. I find that all parties were served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 2 Month Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

Testimony provided by the landlord explained this tenancy began on February 1, 2017. Rent is \$493.00 per month and a security deposit of \$246.50 paid at the outset of the tenancy continues to be held by the landlord.

The landlord confirmed that he issued a 2 Month Notice to End Tenancy ("2 Month Notice") to the tenant on August 1, 2018. The reasons cited on the 2 Month Notice were listed as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child)*

- *The landlord is a family corporation and a person owning voting share in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit*

The landlord said the unit in question occupies the top floor of a 15 unit rental building, is well maintained and meets all of his needs. Specifically, the landlord explained significant repairs and renovations are taking place in the building and he noted he intends to use the unit in question as construction office and living space. The landlord said the unit in question does not require any repairs and is therefore well appointed for occupation. Currently, the landlord lives in the Lower Mainland and stays in a hotel when he visits the building. The landlord said this practice has become expensive, is inconvenient and does not allow him the flexibility he requires to attend to the building's repairs and renovations on a regular basis. In addition, the landlord said the building houses numerous people with mental health issues and he is finding himself having to spend more time at the property than he originally anticipated.

The tenant challenged the good faith of the 2 Month Notice issued. She stated a previous 2 Month Notice issued in May 2018 for a different reason was dismissed by an Arbitrator during a July 2018 arbitration. The tenant argued the 2 Month Notice before me was a continuation of the difficulties the parties had experienced in the spring of 2018 and highlighted the fact the 2 Month Notice before me was issued to her 22 days after the arbitrator's decision related to the May 2018 notice. The tenant questioned why her unit was sought for use by the landlord when unit #102 was designed in a similar fashion and would also be able to accommodate the needs of the landlord.

The landlord denied any ill-will existed between the parties and said unit #102 was unsuitable for his needs. The landlord said #102 was currently occupied by a hoarder, would require a significant amount of effort to bring to an appropriate standard and may place his personal goods in jeopardy as it was located on a ground floor.

Analysis

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline #2 examines the issue of good faith. It states:

A claim of good faith requires honesty of intention with no ulterior motive...

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 that they do not have an ulterior motive for ending the tenancy.

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After considering the oral testimony of both the tenant and the landlord, and after having reviewed the evidence submitted at the hearing, I find that the landlord has successfully demonstrated that he truly intends to fulfill the reasons cited on the 2 Month Notice. The landlord was able to provide detailed and consistent testimony that supported his reasons for wanting to occupy the unit in question. The tenant sought to establish that the landlord issued the 2 Month Notice in bad faith. I find the tenant failed to adequately identify what exactly the alternative motive would be for the landlord to occupy her rental unit. The tenant was unable to produce any documentation that would support her allegation the landlord did not intend to occupy the unit, that he threatened to raise the rent, or attempted to coerce her out of the rental unit. While, the timing of the second 2 Month Notice does raise some questions around the good faith, I find the issuance of the second 2 Month Notice shortly after the issuance of the first, speaks to his strong desire to occupy for his own personal use and to mitigate his costs associated with hotel stays.

While I understand and appreciate the tenant's frustrations related to her very limited housing options, I must balance these grievances with the landlord's right to occupy his own property.

During the hearing the tenant questioned whether the landlord should have served her with a 4 Month Notice to End Tenancy, rather than a 2 Moth Notice. A 4 Month Notice to

End Tenancy is only required when a landlord intends to demolish, renovate, repair or convert a rental unit.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(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.

After reviewing the evidence submitted to the hearing by both parties, I find that the 2 Month Notice dated August 1, 2018 which was disputed by the tenant to be valid. Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's 2 Month Notice complies with section 52 of the *Act*, I find that this tenancy ends pursuant to the 2 Month Notice on October 31, 2018.

Conclusion

The tenant was unsuccessful in her application to cancel the landlord's 2 Month Notice to End Tenancy. I am granting the landlord an Order of Possession to be effective at 1:00 P.M. on October 31, 2018. If the tenant does not vacate the rental unit by 1:00 P.M. on October 31, 2018, the landlord may enforce this Order in 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 27, 2018

Residential Tenancy Branch