



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to section 49; and
- Reimbursement of the filing fee pursuant to section 72.

The tenants and landlords attended. The landlords acknowledged receipt of the Notice of Hearing and the tenants' documents. The tenants acknowledged receipt of the landlords' materials. No issues of service were raised. I find the tenants served the landlords pursuant to section 89 of the *Act*.

Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

I note that Section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to:

- Cancellation of the Two Month Notice pursuant to section 49; and
- Reimbursement of the filing fee pursuant to section 72.

If the tenants' claims are dismissed, are the landlords entitled to:

- An order of possession pursuant to section 55 of the *Act*.

During the hearing, the parties agreed that the tenants named in this application are the current tenants of the unit.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, I do not reproduce all details of their respective submissions and arguments here. I set out below the relevant and important aspects of the tenants' claims and my findings.

The parties testified that this tenancy began on February 1, 2015. Rent is \$1,150.00 payable on the first of the month. At the beginning of the tenancy, the tenants paid a security deposit of \$550.00 and a pet deposit of \$550.00, for a total of \$1,100.00. The deposits remain with the landlords and the tenants have not provided authorization to the landlords to retain any portion of the deposits.

The tenants acknowledged receipt of the Two Month Notice dated September 27, 2018 and posted that day to their door, with an effective date of November 30, 2018. Pursuant to section 90 of the *Act*, service is effective 3 days after posting, being September 30, 2018.

The parties submitted a copy of the Two Month Notice in evidence. It states the following with respect to the reasons for issuance,

"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)."

The landlords testified the unit and their home are in the same building. The landlords stated that the female landlord's mother intends to occupy the unit when the tenants vacate. The landlords submitted a copy of an email dated October 9, 2018 from the

mother of the female tenant stating that she intended to occupy the unit in December 2018.

The tenants stated their belief that landlords intend to rent the unit at a higher rent when the tenants leave. In support of their suspicion, the tenants testified to efforts by the landlords to have them vacate without providing compensation equal to one month's rent as required by the *Act*. The landlords denied their actions indicated lack of good faith; the parties confirmed the landlords provided the compensation required by the *Act*.

Analysis

I find, as both parties agree, that the landlords served the Two Month Notice on the tenants on September 30, 2018, pursuant to sections 88 and 90 of the *Act*.

Section 52 of the *Act* states that, for a Two Month Notice to be effective, it must be in writing, be in the approved form, and state the grounds for ending the tenancy. I find the Two Month Notice complies with section 52 of the *Act*.

Section 49 provides that the tenants may dispute a Two Month Notice by making an application within fifteen days of the receipt of the Notice. The tenants applied for dispute resolution on October 2, 2018, within the 15-day period.

If the tenants file an application to dispute the notice, the landlords bear the burden to prove, on a balance of probabilities, the grounds for the Two Month Notice.

The landlords must now show on a balance of probabilities, that is, it is more likely than not, that the tenancy should be ended for the reasons identified in the Two Month Notice. In the matter at hand, the landlords must demonstrate that the landlords intend in good faith to have the mother of the female landlord occupy the rental unit.

Residential Tenancy Policy Guideline 2 states that *good faith* is a legal concept and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

If the good faith intent of the landlords is called into question, the onus is on the landlords to establish that they truly intended to do what they said on the Two Month

Notice. The landlords must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I understand the tenants' frustration and anxiety around having to leave the rental unit and find replacement accommodations.

I have considered all the evidence and testimony with respect to the tenants' claims that the landlords have not issued the Two Month Notice in good faith. I have considered the landlords' affirmed oral testimony supported by the written confirmation from the female tenant's mother, that the mother intends to occupy the unit.

A suspicion on the tenants' part that the landlords intend to rent the premises to new tenants at a higher rent is not evidence the landlords do not have good faith. The tenants submitted no evidence to establish more than conjecture.

I accept the landlords' testimony on a balance of probabilities that they intend in good faith to occupy the unit and do not intend to defraud the tenants, act dishonestly or avoid obligations to the tenants or under the *Act*. I accept their evidence, supported by the mother's letter, that the tenants' unit will accommodate the female landlord's mother.

In consideration of the testimony of the parties and the evidence submitted, I find the landlords have met the burden of proving on a balance of probabilities that they have established cause for ending the tenancy. I therefore dismiss the tenants' claim to cancel the Two Month Notice.

I now consider whether the landlords are entitled to an order of possession pursuant to section 55.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlords' notice to end tenancy complies with section 52 and the tenants' application is dismissed.

As I found, the Two Month Notice complies with section 52 above, and I have dismissed the tenants' application, I therefore grant the landlords an order of possession, effective 1:00 PM on November 30, 2018.

Conclusion

I grant the landlord an order of possession, effective 1:00 PM on November 30, 2018. This order must be served on the tenants. If the tenants fail to comply with this order, the landlords may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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: November 09, 2018

Residential Tenancy Branch