



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, OLC, FFT

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

The tenant testified that the landlord was served the notice of dispute resolution package by leaving a copy in the landlord's mailbox sometime in October 2018. The landlord confirmed receipt of the dispute resolution package on October 4, 2018. While leaving a copy of the dispute resolution application in the landlord's mailbox does not conform to the service requirements in section 89 of the *Act*, I find that the landlord was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*, on October 4, 2018 because the landlord acknowledged receipt of the notice of dispute resolution package on that date.

At the outset of the hearing the tenant testified that the shortened version of his first name was listed on the dispute resolution application. Pursuant to section 64 of the *Act*, I amended the application to state the tenant's full first name.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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

1. Is the tenant entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
3. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
4. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
5. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2011 and is currently ongoing. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is the main floor of a house with a separate basement suite below.

The landlord testified that she originally planned to sell the subject rental property and use part of the proceeds to purchase an apartment for her daughter. The landlord

testified that in the beginning of September 2018 she put the property up for sale but had a difficult time marketing the subject rental property because the tenant had marijuana plants on the front porch which he refused to move. The landlord testified that after the property was on the market for approximately 20 days without any real interest, she decided that instead of trying to sell the subject rental property, she would allow her daughter to move into the main floor suite occupied by the tenant.

The landlord's daughter testified that she, her husband and their baby are currently residing with her mother but that her mother's place is too crowded and that she would like a place of her own. The landlord's daughter testified that the main floor rental property will work well for her family and that she plans on moving in as soon as it is available.

The landlord testified that on September 28, 2018 she posted a Two Month Notice to End Tenancy for Landlord's Use with an effective date of November 30, 2018 (the "Two Month Notice") on the tenant's door. The tenant confirmed receipt of the Two Month Notice on September 28, 2018. The tenant applied for dispute resolution to cancel the Two Month Notice on October 2, 2018.

The Two Month Notice stated the following reason for ending this tenancy:

- 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 landlord entered into evidence an e-mail from her realtor to herself dated October 4, 2018 which states that the realtor told the tenant that she had been let go and that the house had been taken off the market.

The tenant testified that the landlord did not provide him with any notice that the realtor's assistant would be entering the subject rental property to take photographs for the purpose of marketing the house for sale in September of 2018. The tenant testified that the tenant in the basement suite was provided with a key to the subject rental property and opened the door to the subject rental property to allow the realtor's assistant in. The tenant testified that his mother was in the subject rental property at that time and asked who the people who entered without permission were. The tenant testified that the realtor's assistant asserted that they had a right to be there to take photographs to put the subject rental property up for sale. The tenant testified that he

did not give permission for his belonging to be photographed and used to market the subject rental property for sale.

The landlord testified that the realtor spoke with the tenant 24 hours in advance and received permission to enter at that time. The landlord testified that the basement tenant did not have a key to the tenant's subject rental property and that the tenant himself had provided the realtor's assistant with the key to enter the subject rental property. The landlord testified that she did not give the tenant notice of entry in writing.

The tenant testified that he believes that the landlord's failure to provide him with proper notice of entry invalidates the Two Month Notice. The tenant also testified that he believes the landlord is trying to evict him because the landlord believes that he was trying to disrupt the sale of the subject rental property. The tenant testified that while he did have marijuana plants on the front porch, he was not trying to disrupt the sale of the subject rental property. The tenant also testified that the landlord wants to evict him so that she can receive a higher amount for rent.

Analysis

More Time

I find that the tenant applied to cancel the Two Month Notice within the timeframe allowed under section 49 of the *Act*. I find that the tenant did not need to apply for more time to cancel the Two Month Notice.

Two Month Notice

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenant on September 28, 2018, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Policy Guideline 2 explains the 'good faith' requirement as requiring 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.

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for her daughter. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence provided for this hearing.

While the tenant argues that the landlord is evicting him for allegedly disrupting the sale of the house as well as an attempt to increase the rent received from the subject rental property, I find that the testimony of the landlord's daughter confirms and supports the landlord's testimony that the daughter plans on moving in.

Based on the foregoing, I find that the tenant is not entitled to a cancellation of the Two Month Notice.

When a tenant's application to dispute a landlord's notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Two Month Notice submitted into evidence, I find that the Two Month Notice complies with section 52 of the *Act*. As a result, I find that the landlord is entitled to an Order of Possession. The Order of Possession will take effect on November 30, 2018, the effective date on the Two Month Notice.

Notice of Entry

Section 29 of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

I find that in September of 2018 the landlord did not provide the tenant with written notice of entry, in accordance with section 29 of the *Act*. Pursuant to section 62 of the *Act*, I Order the landlord to comply with section 29 of the *Act*. I find that the landlord's breach of section 29 does not invalidate or have any impact on the Two Month Notice.

I find that since the tenant was successful in his application for an Order that the landlord comply with the *Act*, he is entitled to recover the \$100.00 filing fee from the landlord. Pursuant to section 72, I find that the tenant is entitled to deduct \$100.00 from rent due to the landlord.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on November 30, 2018**, which should be served on the tenant. 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.

Pursuant to section 72, I find that the tenant is entitled to deduct \$100.00 from rent due to the landlord.

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 08, 2018

Residential Tenancy Branch