



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR, CNL

Introduction

This hearing was convened in response to the tenant's application and subsequently amended pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancel a 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) dated November 24, 2018 pursuant to Section 49(3) of the Act.
- Cancel a 10 Day Notice for Unpaid Rent dated December 05, 2018.
And, the application later amended to,
- Cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use dated January 21, 2019 pursuant to Section 49(3) of the Act.
- For additional time to file their application seeking cancellation of Notices.

Both parties attended the hearing and were given opportunity to be heard, to present relevant testimony, to make relevant submissions, to call witnesses and to cross-examine one another. Each party acknowledged the receipt of the other party's documentary evidence. The parties were provided opportunity to mutually resolve their dispute to no avail.

Preliminary matters –request for more time to cancel a Notice to End

At the outset of the hearing the parties agreed that the named respondent in this matter is the valid landlord of this tenancy and that a landlord/tenant relationship has existed between the parties since the outset of the tenant's occupation of the rental unit.

The tenant previously filed to dispute the 2 Month Notice to End Tenancy dated November 24, 2018. No one appeared for the respondent/landlord of that matter. and the consequent hearing Decision dismissed the tenant's application on the basis of service, with leave to reapply. None the less it is now undisputed that the Notice dated

November 24, 2018 was issued and signed by the applicant's co-tenant, TL, and not the landlord of the tenancy. I have benefit of a copy of that Notice. It is my preliminary finding that the Notice is not valid as it was not issued by the landlord.

Additionally, the tenant sought cancellation of the 10 Day Notice to End for Unpaid rent, also issued and signed by the applicant's co-tenant and not the landlord. I have benefit of a copy of that Notice. It is my preliminary finding that the 10 Day Notice is not valid as it was not issued by the landlord.

Based on the above, having found the above 2 Notices on their face to be fatally flawed they are of no effect and effectively cancelled. I find the tenant may have filed their application late but under the above *exceptional circumstances* the issue of late filing is moot. I accept the tenant's subsequent amendment to dispute the merits of the second 2 Month Notice issued by the landlord as the basis of this hearing.

Issues to be Decided

Should the landlord's 2 Month Notice dated January 21, 2019 be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The relevant evidence in this matter is as follows. The tenancy began in September 2016 following the parties' verbal agreement incorporating the applicant as part of the existing tenancy with TL. The landlord served each of the tenants identical Two Month Notices to End Tenancy for Landlords Use of Property pursuant to Section 88 of the Act served January 26 and January 28, 2019 by registered mail and posting on the door, respectively, which the tenant filed to dispute by their amendment application on February 06, 2019 within the legally prescribed time to do so. The Notice to End states, and which the landlord testified that pursuant to Section 49(3) the landlord intends to allow occupation of the rental unit by their daughter whom currently resides with them, as well as occupation with the daughter's new husband (BGW), subsequent to their union by marriage February 14, 2019. The landlord provided proof of the marriage inclusive of the licence and Registration of Marriage. The daughter in attendance to this matter also testified they will occupy the rental unit with their husband as soon as the rental unit is available. The tenant testified they do not know if the daughter's intentions are valid. The tenant provided that the tenancy has been tumultuous and stressful over

the past year giving rise to the tenant's speculation of an ulterior motive on the part of the landlord. The tenant thinks the landlord is ending the tenancy in bad faith.

The landlord testified that they do not have an ulterior motive therefore did not issue the notice in bad faith. In concert with the landlord the daughter testified that their new husband's mother had been ill with cancer, marriage plans were accelerated as a result and all culminated with the husband's mother passing away 10 days after the marriage event (one week before this hearing). The landlord testified that the sole intention for ending the tenancy is for the rental unit to be occupied by the daughter and their new husband. The tenant testified they are currently dealing with a debilitating injury but have been trying to seek alternate living arrangements without success, however intend to continue. The landlord testified that they seek an order of possession but with due consideration are willing to extend the effective date an additional 2 months to May 31, 2019.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out as follows.

The tenant called into question whether the landlord issued the Notice to end in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows. It notes that, 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.

The Guideline states in part as follows:

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.

The landlord's daughter gave clear concise and credible testimony. The landlord and their daughter provided details as to their desire and need to accommodate their new relationship and union following an accelerated set of trying events. I find the landlord's intention to accommodate their daughter's need for their own living accommodations, makes sense. On balance of probabilities, but moreover on the evidence of the landlord, which I find compelling, I prefer the landlord's evidence over the tenant's speculation of the landlord's motives. I find it most likely that the landlord's 2 Month Notice to End dated January 21, 2019 was issued in good faith. As a result, the landlord is entitled to an Order of Possession pursuant to Section 55 of the Act. As further result the tenant's application is dismissed in it's entirety.

In considering the landlord's submission of their willingness to extend the date of the tenancy's end by an additional period and in consideration of the tenant's challenges in securing alternate accommodations, pursuant to authority under Section 55(3) of the Act, I extending the effective date of the Notice to End of this matter to June 30, 2019, at which time the tenancy will end.

It must be known that the tenant is at liberty to vacate earlier with notice to the landlord; however, it must also be known that the compensation provisions prescribed in **Section 51** of the Act remain in full force.

As a result of all the above

I grant an Order of Possession to the landlord effective **June 30, 2019**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenant's application dismissed. The landlord's Notice to End of this matter is upheld and they are granted an Order of Possession and the tenancy will end in accordance with the Order.

This Decision is final and binding.

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: March 07, 2019

Residential Tenancy Branch