



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On September 11, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by placing it in the Landlord's mailbox on or around September 18, 2020 and the Landlord confirmed receipt of this package. She did not oppose when or how this package was served. The Tenant did not confirm with the Landlord if she could view his digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure; however, the Landlord acknowledged that she was able to view the digital evidence. Based on this undisputed testimony, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package. In addition, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord stated she did not serve her evidence to the Tenant. As a result, the Landlord's evidence was excluded and will not be considered when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on February 1, 2017. Neither party could agree on the amount of rent that was due per month; however, it was either \$675.00 or \$700.00 per month. They agreed that rent was due on the first day of each month and that a security deposit of \$325.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Notice was served by being put in the Tenant's mailbox, and she believes this was done on September 1, 2020. The Tenant claimed that the Landlord opened the door to his rental unit on August 31, 2020 and threw the Notice into his rental unit. Regardless, he received it on this day.

The reason the Landlord served the Notice is because "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 effective end date of the tenancy noted on the Notice is unclear, but it appears to be November 1, 2020.

When providing testimony regarding the reason the Notice was served, the Landlord advised that she will not be occupying the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenant on August 31, 2020, I have reviewed a copy of the Notice provided to me to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. The dispute address and the Tenant's name are incorrect on the Notice and this would potentially be reasons why the Notice may not be determined to be valid. However, as the Tenant acknowledged that this Notice was for him and for the rental address, I am not satisfied that this Notice is invalid due to these discrepancies.

In considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I find it important to note that Policy Guideline # 2A discusses good faith and states that:

"The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant."

As the Landlord acknowledged that she has no intention of occupying the rental unit, I am not satisfied that she has established adequate grounds to justify service of the Notice. Therefore, I find that the Notice of August 31, 2020 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of August 31, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: October 26, 2020

Residential Tenancy Branch