



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

A hearing was convened on April 08, 2022 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The hearing on April 08, 2022 was adjourned for reasons outlined in my interim decision of April 08, 2022. The hearing was reconvened on August 22, 2022 and was concluded on that date.

Service of documents was discussed in my interim decision and will not be repeated here, except to confirm that the Landlord re-served his evidence package to the Tenant by email, as directed by me in my interim decision. The Landlord stated that his initial evidence package was sent to the Tenant by email on April 09, 2022. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Landlord submitted additional evidence to the Residential Tenancy Branch after the hearing on April 08, 2022. As the parties were advised in my interim decision, neither party was permitted to submit additional evidence. The declared exception to this is that the Landlord had the right to submit evidence of re-serving his evidence package to the Tenant.

As neither party had the right to submit additional evidence after April 08, 2022, any evidence submitted after that date has not been accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel, affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord stated the tenancy began in 2015. The Tenant stated that it began in 2012.

The Landlord and the Tenant agree that there are two suites in the lower level of this residential complex and the Landlord lives in the upper portion of the complex. The parties agree that rent of \$700.00 is due by the first day of each month.

The Agent for the Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use was posted on the front door of the rental unit on December 30, 2021. The Tenant stated that he received this Notice on January 01, 2022.

The Two Month Notice to End Tenancy for Landlord's Use declares that the rental unit must be vacated by February 28, 2022 because the unit will be occupied by a child of the Landlord or the Landlord's spouse.

The Witness for the Landlord stated that:

- She is the Landlord's daughter;
- She will be moving into the rental unit with her husband and young child;
- She is currently living with her in-laws;

- She wants to move into the rental unit because her parents, who live above, will be able to assist with childcare;
- Her in-laws work “more than full time” and are less able to assist with childcare;
- She is living with her in-laws on a temporary basis, until this matter is resolved;
- Prior to moving in with her in-laws, she was living in a home that she jointly owns with the Agent for the Landlord, who is her brother;
- The home she was previously living in is currently being renovated;
- She does not know when the renovations to that home will be complete;
- She and her brother may rent that home out once the renovations are complete; and
- She will be living in the unit for at least one year due to her need for assistance with childcare.

The Agent for the Landlord stated that he owns a home with the Witness for the Landlord; that it is an investment property; and that it may be rented to a third party once the renovations are complete.

The Tenant stated that he does not believe that the daughter intends to move into the rental unit, although he did not submit any evidence to support this belief.

The Tenant stated that the second suite on the lower level was recently built in June or July of 2021 and that it was rented out on January 01, 2021. He contends that the daughter could have moved into this 2 bedroom unit without the need to end his tenancy.

The Agent for the Landlord stated that the second suite on the lower level was fully renovated in May or June of 2021 and that it was rented to a third party in June of 2021.

The Tenant stated that in January of 2022 the Agent for the Landlord “threatened” to kick him out when they discussed service of the Two Month Notice to End Tenancy for Landlord's Use. The Agent for the Landlord stated that when they discussed the Two Month Notice to End Tenancy for Landlord's Use in January of 2022, he reiterated the information provided to the Tenant on the Two Month Notice to End Tenancy for Landlord's Use.

Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on December 30, 2022 a Two Month Notice to End Tenancy for Landlord's Use was posted on the door of the rental unit. I find this was proper notice of the Landlord's intent to end the tenancy pursuant to section 49(4) of the *Act*.

I find that the Landlord has established grounds to end this tenancy pursuant to section 49(4) of the *Act*. In reaching this conclusion I was heavily influenced by the testimony of the Landlord's daughter, who stated that she intends to move into the rental unit. I find the daughter's evidence to be consistent and direct, and I could find no reason to question her credibility.

While I accept the undisputed evidence that the Landlord's daughter co-owns another residential property, this does not establish that she does not wish to reside in the rental unit because it provides her with close proximity to childcare.

I find that there is insufficient evidence to establish that when this Two Month Notice to End Tenancy for Landlord's Use was served, there was another suite on the lower level that was available for the Landlord's daughter to move into. In reaching this conclusion I was influenced by the absence of evidence to support the Tenant's submission that this suite was available or to refute the Agent for the Landlord's testimony that the suite was not available, as it had been rented to a third party in June of 2021.

Although the Landlord did not submit proof that the suite was rented to a third party in June of 2021, I find the Landlord could not have reasonably known this would be an issue, as it was not raised by the Tenant in the Application for Dispute Resolution. I therefore find it reasonable for the Landlord not to present evidence regarding when that suite was rented to a third party.

In reaching this conclusion I have placed no weight on the undisputed evidence that in January of 2022 the Agent for the Landlord told the Tenant that his tenancy was ending. I find this is reasonable information to provide to a tenant and serving a Notice to End Tenancy, and it does not establish that there are not grounds to end the tenancy pursuant to section 49(4) of the *Act*.

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 49(4) of the *Act*, I dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use. As the application to set aside the Notice to End Tenancy has been dismissed and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant's application is without merit, and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on August 31, 2022. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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: August 22, 2022

Residential Tenancy Branch