



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, FF, O (Main Floor Tenants' Application)

CNL, FF, O (Basement Tenant's Application)

Introduction

This dispute concerns a rental home comprised of the main floor and basement suite which are rented separately to the applicants under two different tenancy agreements. At the end of June 2017, the applicants in both rental units were served with a Two Month Notice to End Tenancy for the Landlords' Use of Property (the "Two Month Notice") dated June 30, 2017.

On July 11, 2017 the applicants for each rental unit filed an Application for Dispute Resolution (the "Application") to dispute the notice to end tenancy and requested that the two files be joined and heard together in this conference call hearing.

The Tenants for each rental unit appeared for the hearing. The Landlord named on the Applications, referred to in this Decision as the seller of the rental home, also appeared for the hearing along with the purchaser of the rental home. The hearing process was explained to the parties and no questions were asked of how the proceedings would be conducted.

Preliminary Issues

At the start of the hearing, the basement Tenant confirmed that she had moved out of the rental unit on August 31, 2017. The purchaser of the rental home confirmed that after the basement Tenant had vacated, she had moved into the basement suite of the rental home and was residing there until the outcome of this hearing.

The Tenant for the basement suite was asked why she was appearing for this hearing and explained that she still wanted to see the reasons the Landlord had to end the tenancy and to deal with her monetary claim.

The basement Tenant and the main floor Tenants explained that they had each submitted an amendment for the monetary claim into evidence for this hearing. However, after examining their evidence, there was no *Amendment to an Application for Dispute Resolution* (form RTB-42) before me from either applicant. The Landlord confirmed that she had not been served with any amendments to the Applications before me.

The basement Tenant was informed that as she had vacated the rental unit pursuant to the vacancy date on the 2 Month Notice, her Application to cancel the 2 Month Notice was now moot. In addition, both applicants were informed of Rule 4.1 of the Dispute Resolution Rules of Procedure (the “Rules”) which states:

“An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and*
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.*

An amendment may add to, alter or remove claims made in the original application.

As stated in Rule 2.3 [Related issues], unrelated claims contained in an application may be dismissed with or without leave to reapply.”

[Reproduced as written]

These instructions are also referenced in the Dispute Resolution Process fact sheet (RTB-114) which was provided to the applicants when the Applications were filed. Therefore, as there were no amendments to the Applications before me that complied with the Rules, or any details provided in the “Other” issues that related to a monetary claim, I was unable to determine any monetary issues in this hearing. However, the applicants were informed during the hearing that they are still at liberty to file separate applications requesting a Monetary Order.

As the basement Tenant moved out of the rental unit before I was able to make any legal findings on the disputed 2 Month Notice, I also denied the basement Tenant’s request to

recover the filing fee from the Landlord. Accordingly, the basement Tenant's Application was dismissed in its entirety without leave to re-apply.

The basement Tenant confirmed that she was not providing any evidence in this hearing and therefore I allowed her to remain in the hearing to listen to the proceedings.

The main floor Tenants were informed that the hearing would continue to determine their Application to cancel the 2 Month Notice, which also related to the "Other" issues which sought to question the legitimacy of the agreement for the purchase and sale of the rental home.

In this case, the evidence before me was that the Landlord seller had served the Tenants with the 2 Month Notice after being provided with a written notice from the purchaser of the rental home who requests possession of it. The purchaser is now occupying part of the rental home.

Section 49 of the *Residential Tenancy Act* (the "Act") allows a landlord to give a 2 Month Notice because a purchaser intends to occupy the rental unit in good faith after purchasing it. As, the purchaser now seeks an Order of Possession, I find the purchaser is inextricably linked to this dispute is likely to be affected by the outcome of this hearing. Therefore, pursuant to my authority under Section 64(3) (c), I amended the Tenants' Application to include the purchaser as a respondent to this dispute.

The two hour hearing continued to hear the evidence of both parties with respect to the 2 Month Notice. At the end of the hearing, I invited the parties to reach mutual resolution between them as an alternative form of resolution in this matter. The parties discussed the issues between them, turned their minds to compromise, and were able to reach a resolution of this dispute as follows.

Section 63 of the Act, allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Settlement Agreement

1. The parties agreed to mutually end the tenancy at 5:00 p.m. on October 1, 2017. This will give the Tenants sufficient time to vacate the rental unit and leave it clean and undamaged as required by the Act.
2. As the purchaser of the rental home is occupying part of it, the purchaser is issued with an Order of Possession which is effective for this date and time. This

order must be served to the Tenants and may then be enforced if the Tenants fail to vacate the rental unit at the agreed time and date.

3. The Tenants are still entitled to their one month compensation payable under the 2 Month Notice. The parties agreed that the Landlord had not accepted payment from the Tenants for August and September 2017. Therefore, the Tenants may cancel one of the payments to achieve their relief under the 2 Month Notice and the Landlord may accept rent for the outstanding month of occupancy.

The parties confirmed their voluntary agreement to enter into the terms and conditions as detailed above and confirmed their understanding of resolution in this manner both during and at the conclusion of the hearing. As the parties agreed to end this tenancy mutually, I declined the Tenants' request to recover the filing fee. This file is now closed.

The parties were provided detailed information at the conclusion of the hearing with respect to: the return of the Tenants' security deposit; the completion of the Condition Inspection Report; and how to leave a rental unit at the end of a tenancy.

The parties were informed that they have the responsibility to apprise themselves of these matters and that further information on these requirements can be found on the Residential Tenancy Branch website or from an Information Office using the contact details on the attached contact sheet.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 26, 2017

Residential Tenancy Branch