



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn or affirmed testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that they received the landlord's 2 Month Notice sent by the landlord by registered mail on December 30, 2017, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

As the landlord confirmed that she received a copy of the tenants' dispute resolution hearing package and written evidence package sent by the tenants by registered mail on January 14, 2018, I find that the landlord was duly served with these packages in accordance with section 89 of the *Act*.

Although Tenant MLJ (the tenant) said that the landlord served their written evidence to the tenants by handing it to their 13-year old child, the tenant did confirm that the tenants had received and reviewed the landlords' written evidence. Under these circumstances, I find that the tenants were duly served with the landlord's written evidence in accordance with the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord? Should any other orders be made with respect to this tenancy?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on July 15, 2015. The landlord testified that the original Residential Tenancy Agreement (the Agreement), which neither party entered into written evidence, established the monthly rent for this two unit residence at \$2,200.00. The landlord said that monthly rent was to be paid in two stages, some unspecified amount on the first of each month and the remainder on the fifteenth. The landlord said that the amount to be paid on each of these dates varied

and was not set at a specific amount. The tenant disagreed with the landlord's description of the monthly rental arrangements for this tenancy. The tenant testified that the tenants have only been expected to pay \$1,000.00 in monthly rent for the past year and a half, as they are only residing in the upper portion of this rental property, with their three children. The tenant said that their monthly rent covers the period from the fifteenth of each month until the fourteenth of the following month. Although the landlord subsequently confirmed that the tenants' monthly rent payments have been \$1,000.00 since October 2017, as the lower level suite is unoccupied, the landlord said that these payments cover the calendar month from the first day of each month until the last day of each month.

At the hearing, the landlord questioned why the details of the Agreement were of relevance to the issues to be considered at this hearing. I noted that these details are of importance in the event that the tenancy were to end on the basis of the 2 Month Notice, as tenants would be entitled to a monetary award equivalent to a single month's rent. It would also be important to determine when this tenancy could be legally ended in accordance with the 2 Month Notice.

Both parties agreed that the landlord continues to hold an \$1,100.00 security deposit for this tenancy. The landlord gave undisputed testimony that this security deposit was paid by the sister of one of the tenants who resided at the property for some time.

The parties agreed that the tenants paid \$1,000.00 in rent in January. The tenants maintained that this payment covered the period from January 15, 2018 until February 14, 2018. The landlord said that this payment was for the calendar month of January. Both parties agreed that no payments have been made for February. Both parties were aware that the tenants would be entitled to one month of rent free occupancy of the rental unit after the tenants received the landlords' 2 Month Notice.

The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

On the 2 Month Notice, the landlord identified February 28, 2018 as the effective end date for this tenancy.

In their written evidence, the tenants noted that the landlord issued the 2 Month Notice shortly after receiving a decision from an arbitrator appointed under the *Act* in which the landlord's previous attempt to end this tenancy on the basis of a 1 Month Notice to End Tenancy for Cause was set aside. They also questioned the landlord's true intentions in claiming that the landlord was going to move into this rental unit because the landlord's then manager of this property requested authorization to "show" the premises to someone. The tenant testified that they have been looking for alternate accommodations, but have been unable to find anything suitable for their needs.

The landlord testified that they currently reside in another community with their husband, and has to stay with friends when the landlord returns to this community. The landlord said that they have health issues and an extensive group of family in the community requiring them to live in the community where the rental unit is located as opposed to where they currently reside. The landlord gave oral testimony and provided written evidence to explain that the "showing" referred to in the tenants' written evidence was actually an inspection by their contractor who is already doing some work on the lower level of this rental

home and who the landlord is planning to have repair and upgrade the upper level where the tenants are residing to prepare for the landlord's return to reside there. The landlord testified that it is their intent to use the tenants' rental unit as the landlord's principal residence once it is repaired and renovated to their satisfaction. The landlord said that they have no intention of renting any portion of this home again and that the tenants' proposal that the landlord live in the lower level is unacceptable to the landlord.

Analysis

In accordance with subsection 49(8) of the *Act*, tenants must file their application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants were deemed to have received the 2 Month on January 6, 2018. The tenants actually filed their application for dispute resolution on January 5, 2018. Accordingly, the tenants filed within the fifteen day limit provided for under the *Act*.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. In this case, the tenants also questioned the landlord's good faith in seeking an end to this tenancy for the reasons cited in her Notice.

Residential Tenancy Policy Guideline #2 provides guidance regarding the Good Faith Requirement when Ending a Tenancy in the following terms:

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....

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 tenants have asked me to take into account the timing of the landlord's issuance of the 2 Month Notice, only eleven days after a decision was made by the previous arbitrator to set aside the landlord's 1 Month Notice. Although the timing of the landlord's 2 Month Notice does raise some concerns about the landlord's intentions, I found the landlord's testimony was straightforward and direct. The landlord clearly stated that it was the landlord's full intent to use the tenants' rental unit as the landlord's principal residence once it is repaired and upgraded to the landlord's liking. The landlord testified that their husband continues to live in one of their two homes, and the landlord is planning to move into the other of these homes so as to be closer to the landlord's extended family and health care providers. The distance between these properties is extensive, almost 400 kms apart.

Other than their evidence regarding the previous decision and the "showing", the latter of which the landlord adequately explained, the tenants provided little that would call into question the truthfulness of

the landlord's testimony or call into question whether the landlord's good faith in issuing the 2 Month Notice.

I accept the landlord's statement that they have every intention of residing in the living space currently occupied by the tenants and have no intention of renting these premises to anyone else. As I find that the landlord has met the burden of proof required to establish that the reason stated on the 2 Month Notice was the landlord's true reason for ending this tenancy, I dismiss the tenants' application to cancel the landlord's 2 Month Notice.

As the parties have different interpretations of the rental period covered by the tenants' monthly rent payments, there is a need to issue a finding to clarify this aspect of the remaining portion of this tenancy. This power is delegated to me under the *Act*, as this is an issue that has a direct bearing on the following provision of section 51(1) of the *Act*, which takes effect when landlords send tenants a 2 Month Notice.

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on a balance of probabilities, I found the tenants' testimony as to the terms of their tenancy agreement more convincing than that of the landlord. Although the landlord said that the tenancy agreement called for the tenants' provision of \$2,200.00 per month in two somewhat unclear payments, the landlord did not provide consistent details as to whether or when these written terms converted to the more recent practice whereby the tenants were only paying \$1,000.00 for their use of the upper level of this rental property. By contrast, the tenants' testimony in this regard was consistent. In the absence of any copy of the Agreement between the parties, I accept that the tenants' payments of \$1,000.00 each month were to cover the period from the fifteenth of each month until the fourteenth of the following month.

The earliest possible date that the landlord's 2 Month Notice deemed served to the tenants on January 6, 2018 could take effect would be March 15, 2018. I find that the corrected effective date of the landlord's 2 Month Notice is March 15, 2018.

I find that the tenants' February 2018 rent would not become due until February 15, 2018, and would normally cover the period from Feb. 15, 2018 until March 14, 2018. Based on this finding, I order that the tenants not pay rent in February, as a means of providing them with compensation pursuant to section 51(1) of the *Act* for the last month of their tenancy. The parties are advised that the *Act* allows for additional compensation to the tenants if the landlord does not use the premises for the reason stated in the landlord's 2 Month Notice.

As the tenants have been unsuccessful in their application, I make no order to allow them recovery of their filing fee from the landlord.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on March 14, 2018. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the monthly rent period for this tenancy is from the fifteenth of each month until the fourteenth of the following month. On this basis, I order that the provisions of section 51(1) of the *Act* are to be met by the tenants' withholding of their next scheduled rent payment due on February 15, 2018.

I dismiss the tenants' application to recover their filing fee from 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: February 08, 2018

Residential Tenancy Branch