



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUSTIA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

AM ("landlord"), agent for the landlord, attended this hearing. NL, counsel for the landlord, also attended the hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice dated December 28, 2018, which was personally served to the tenants on the same date, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues 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?

Background and Evidence

This month-to-month tenancy began on May 1, 1998. Monthly rent is currently set at \$2,965.82, payable on the first of the month. The tenants paid a security deposit of \$600.00, which the landlord still holds.

The landlord issued the 2 Month Notice on December 28, 2018, with an effective move-out date of February 28, 2019 for the following reason:

“All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a closer family member intends in good faith to occupy the rental unit”.

The landlord issued the 2 Month Notice to the tenants after they sold the home. The landlord included copies of the contract of purchase and sale in their evidence, dated December 13, 2018. The landlord also submitted a copy of the “Tenant Occupied Property - Buyers Notice to Seller For Vacant Possession” dated December 27, 2018 stating that the subjects have been removed, and the buyers require the tenants to move by 1:00 p.m. on February 28, 2019 as they intend in good faith to occupy the home.

The tenants do not dispute the receipt of documents, nor do they dispute the validity of the 2 Month Notice. The tenants testified that they are disputing the 2 Month Notice because of the hardship caused by the effective date of the 2 Month Notice as they are currently out of the country until March 2, 2018. The tenants testified that their vacation was booked in November of 2018, and feel the extension can be accommodated with little impact to the buyers. Both parties attempted to discuss and settle the matter before the hearing, but were unsuccessful.

The landlord submitted that the tenants were aware that the home would be listed for sale in August of 2018, and that the 2 Month Notice was issued in accordance with the *Act*. The landlord is requesting an Order of Possession as the completion date is February 28, 2019, and the buyers will take possession on March 1, 2019.

Analysis

Subsection 49(5) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit when:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

I find that the landlord has met their burden of proof to show that they issued the 2 Month Notice in good faith, and that the above conditions have been met. Although I am sympathetic to the tenants that the effective move-out date of the 2 Month Notice conflicts with their travel itinerary, I am satisfied that the landlord has complied with the *Act* and tenancy agreement in ending this tenancy. I also find that the 2 Month Notice complies with section 52 of the *Act* which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Accordingly, I dismiss the tenants' application to cancel the 2 Month Notice. As I find the 2 Month Notice to be valid, and as I find that the 2 Month Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenants were not successful in their application, their application to recover the filing fee is dismissed without leave to reapply.

Conclusion

I dismiss the tenants' entire application without leave to reapply. I find that the landlord's 2 Month Notice is valid and effective as of February 28, 2018. As today is the effective date of the 2 Month Notice, I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

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 28, 2019

Residential Tenancy Branch