



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC MNDCT MT

Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Cause (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenant noted in the hearing that the buyer and new landlord JS did not attend the hearing. The tenant confirmed that he did not serve JS with his application for dispute resolution.

RTB Rule 3.1 of the RTB Rules of Procedure states the following about service of an application:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*

d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

As the landlord GF attended the hearing and confirmed receipt of the tenant's application for dispute resolution ('application'), I find GF duly served with the tenant's application in accordance with section 89 of the *Act*. 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 landlord GF attended the hearing and confirmed service of the application, the hearing proceeded. Both parties were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord testified in the hearing that his surname was misspelled in the tenant's application. As neither party was opposed, the landlord's surname was corrected to reflect the proper spelling of his name.

As the tenant confirmed receipt of the 2 Month Notice dated December 30, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

The tenant applied for more time under section 66 to make his application to cancel the landlord's 2 Month Notice. As the tenant filed his application on January 14, 2019, I find that the tenant filed his application within the required 15 day period under the *Act*, and this portion of the tenant's application is not required and therefore cancelled.

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?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 15, 2017. The tenant pays \$550.00 a month to rent a room from the landlord in his home. Both parties confirmed in the hearing that the tenant does not share a bathroom or kitchen with the landlord. The tenant paid a security deposit in the amount of \$275.00 to the landlord, which the landlord still holds.

The landlord issued the 2 Month Notice dated December 30, 2018, with an effective move-out date of March 1, 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 testified that he issued the 2 Month Notice to the tenant as he had sold his home, with the new owner to take possession on March 1, 2019. The landlord testified that the tenant rented a room, while the home also had a legal rental suite which was rented out. The landlord testified that the new owners wanted to occupy the home and required the use of the room, which the current landlord rented out as he did not need the space. The new owners intend to keep the legal rental suite as a rented suite, and the tenant was not issued a 2 Month. The landlord included copies of the 2 Month Notice as well as Notice as well as “Tenant Occupied Property - Buyers Notice to Seller For Vacant Possession” which stating that the subjects have been removed, and the buyers require the tenant in the bachelor suite only to move by 1:00 p.m. on March 1, 2019 as they intend in good faith to occupy the home.

The landlord’s realtor attended the hearing as a witness, and confirmed under oath the details of the sale.

Both parties confirmed that the landlord did not charge the tenant rent for February 2019 in satisfaction of the free one month’s rent for the issuance of the 2 Month Notice.

The tenant testified that he was disputing the 2 Month Notice for the following reasons. The tenant stated that his surname was misspelled on the 2 Month Notice. The tenant also questioned the landlord’s good faith as the other tenant was not given a 2 Month Notice. Additionally, the tenant felt the landlord did not provide him with the Contract of Purchase and Sale.

The tenant also made an application for monetary compensation in the amount of \$1,000.00. As the tenant did not provide a monetary worksheet for this hearing, the tenant was asked to clarify the details of his claim. The tenant testified that he wanted money to hire a lawyer as he required assistance. The tenant also wanted the 1 month's rent that he was entitled to, as well as the return of his security deposit.

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;

Residential Tenancy Policy Guideline 2 states the following about the good faith requirement when ending a 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 that they do not have an ulterior motive for ending the tenancy.”

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 the tenant was not given a copy of the purchase contract, the service of this document is not required by the *Act*.

I find the landlord's testimony to be credible, and I find that the landlord has provided sufficient evidence to show that the home was indeed purchased, and the new owners intend, in good faith, to occupy the home, which includes the tenant's portion. I accept the landlord's testimony that the home has another suite, which is currently tenanted and will remain tenanted as it is a separate legal suite.

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. Although the tenant's surname was confirmed to be misspelled on the 2 Month Notice, I am satisfied that the 2 Month Notice still complies with section 52 of the *Act*. In the circumstance where a notice does not comply with section 52 of the *Act*, the director has the ability to amend the notice under section 68(1)(b) of the *Act*, which states:

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice dated December 30, 2018.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's 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 an Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Section 49(2)(a) of the *Act* requires the effective date of the 2 Month Notice to be:

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

As the effective date of the 2 Month Notice is March 1, 2019, I correct the effective date in accordance with section 53 of the *Act* to February 28, 2019. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act* so the landlord may take full possession of the premises. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenants applied for monetary compensation for his losses related to this tenancy. Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by Section 7 of the *Act*, which states:

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

As the tenant confirmed that he was given one month's rent as required by section 51(1) of the *Act*, I dismiss this portion of the tenant's claim.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. As the tenancy has yet to end at the time of the hearing, I find the tenant's application to be premature, and I dismiss the tenant's application for the return of his deposit with leave to reapply.

The tenant may also be entitled to compensation under section 51 of the *Act* as follows:

Tenant's compensation: section 49 notice

51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As the tenancy has yet to end at the time of the hearing, I find the tenant's application for compensation under section 51 of the *Act* to be premature, and I dismiss the tenant's application for the landlord's failure to comply with the *Act* with leave to reapply.

As the tenant had not provided sufficient evidence to support how the landlord has failed to comply with the *Act* or tenancy agreement, the tenant's application for the landlord to comply with the *Act* or tenancy agreement is dismissed.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice dated December 30, 2018 I find that the landlord's 2 Month Notice is valid and effective as of February 28, 2019. I issue an Order of Possession to the landlord effective March 31, 2019

As the tenant has not moved out, I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant 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

The remainder of the tenant's application is dismissed with leave to reapply.

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: March 11, 2019

Residential Tenancy Branch