



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, LRE, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), to suspend or restrict the Landlords’ right to enter the rental unit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenants and a family member (the “Tenants”) were present for the teleconference hearing, as were both Landlords. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence.

The Tenants submitted a copy of the Two Month Notice and proof of service documents to the Residential Tenancy Branch. However, while the Tenants noted that additional evidence was submitted online, it was confirmed that these additional documents had not been uploaded and therefore would not be considered in this decision.

The Tenants confirmed receipt of a letter that was submitted into evidence by the Landlords.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Due to the urgent nature of a dispute over a notice to end tenancy, the parties were informed that the hearing would continue with this claim, as well as the Tenants’ request for the recovery of the filing fee. I exercise my discretion to dismiss the Tenants’ application to restrict or suspend the Landlords’ right to enter, with leave to reapply.

Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, are the Landlords entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenants stated that they used to own the rental unit and became tenants when the unit was purchased by the Landlords in 2013. They stated that they did not pay a security deposit and that they have a verbal tenancy agreement to pay \$1,000.00 in rent on the first day of each month.

Landlord D.C. stated that they purchased the home in 2013 and that there was initially a fixed term agreement with the Tenants for 5 years and then another fixed term agreement for a period of one year. The Landlord stated that the tenancy is now on a month-to-month basis with rent of \$1,000.00 due on the first day of each month. The Landlord agreed that no security deposit was paid.

The Landlords testified that the Tenants were served in person with the Two Month Notice on June 26, 2019.

A copy of the Two Month Notice dated June 24, 2019 was submitted into evidence and states the following as the reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The effective end of tenancy date of the Two Month Notice was stated as August 31, 2019.

Landlord D.C. stated that due to marital issues with the other Landlord, he needs a place to move where his children can also stay. He testified as to his plans to move into the rental unit in early September 2019 and to get settled prior to school starting.

Landlord T.C. provided testimony that the Landlords had not yet agreed who will be moving into the rental unit and confirmed that it will either be herself or Landlord D.C. She stated that she was pressured to sign the Two Month Notice with the other Landlord and stated her willingness to provide the Tenants until September 30, 2019 to move. She further stated that the dispute is between the two Landlords and not between the Landlords and Tenants and that the Landlords will need to decide together who is moving into the rental unit.

The Tenants confirmed receipt of the Two Month Notice on June 26, 2019. They provided testimony that they are not disputing the reason for the Two Month Notice, but instead stated that they need an additional month to move. The Tenants noted that they have a new rental unit ready for September 30, 2019 which was the time required to paint the unit and make sure it meets their accessibility requirements.

The Tenants stated that they had proposed the date of September 30, 2019 to the Landlords but that it was not accepted by both Landlords. The Tenants stated their willingness to move, but that they are not able to move by August 31, 2019.

The parties were provided the opportunity to discuss settlement but were unable to reach an agreement.

Analysis

The Landlords served the Tenants with the Two Month Notice pursuant to Section 49(3) of the *Act* in that one of the Landlords intends to move into the rental unit.

As stated in Section 49(8) of the *Act*, a tenant has 15 days to dispute a Two Month Notice. The Tenants confirmed receipt of the Two Month Notice on June 26, 2019 and filed the Application for Dispute Resolution on June 30, 2019, within the time allowable. Therefore, the matter before me is whether the reasons for the Two Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Tenants did not provide any testimony or evidence that the Landlords do not intend to occupy the rental unit. Instead, they stated that they are seeking an additional month to move to ensure their new rental unit is accessible and ready to move into.

Both Landlords provided testimony that one of them will be moving into the rental unit. While Landlord D.C. stated his plans to move into the rental unit in early September 2019, Landlord T.C. stated that they had not discussed which one of them will be moving in. She also stated her willingness to provide the Tenants until September 30, 2019.

An application to dispute a Two Month Notice often relates to a tenant's question of the good faith intentions of the landlord to take steps to accomplish the stated purpose of the notice. However, in this matter I find that the Tenants did not provide testimony and evidence that the Landlords do not intend to move into the rental unit as stated on the notice. As such, I accept the testimony of the Landlords that the reasons for the notice are valid and that one of them plans to move into the rental unit.

Therefore, the Tenants' application to cancel the notice is not successful as I find that the Landlords have established that the notice is valid. As the Tenants were not successful with their application, I decline to award the recovery of the filing fee paid for the application. The Tenants' application is dismissed, without leave to reapply.

Upon review of the Two Month Notice, I find that the form and content comply with Section 52 of the *Act*, and therefore pursuant to Section 55 of the *Act*, I find that the Landlords are entitled to an Order of Possession.

Regarding the date of the Order of Possession, I note that Section 68(2)(a) of the *Act* states the following:

- (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy,

I accept the testimony of Landlord T.C. that she is willing to provide the Tenants until September 30, 2019 which is when their new rental unit will be ready to move into. While the effective date of the notice is stated as August 31, 2019, I found that it was evident from the Landlords' testimony that they do not have a concrete plan as to when they are moving into the rental unit.

While one Landlord stated that his plans to move into the rental unit in early September 2019, the other stated that they have not yet decided which one of them will be moving into the rental unit and requested possession of the rental unit on September 30, 2019.

As such, I find it reasonable to grant the Order of Possession for September 30, 2019; to provide time for the Tenants to move and to provide time for the Landlords to finalize their plans regarding use of the rental unit. I accept the testimony from the Landlords that they plan to move in, but also find that a concrete plan to move in early September 2019 was not in place prior to service of the notice.

I note that the parties did not disagree that both D.C. and T.C. are the Landlords and also find that both Landlords signed the Two Month Notice. The Landlords provided conflicting testimony regarding when use of the rental unit is required and one Landlord stated her intent for the tenancy to end on September 30, 2019. Therefore, I find that it is not unreasonable to end the tenancy on September 30, 2019 pursuant to Section 68(2) of the *Act* and upon request by one of the Landlords.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **September 30, 2019 at 1:00 pm**. This Order must be served on the Tenants. Should the Tenants 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: August 27, 2019

Residential Tenancy Branch