



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated February 28, 2020 ("Two Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenants, E.M., S.M., A.N., and L.M., the Landlord, J.C., and the purchaser of the residential property, A.C., ("Purchaser"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The teleconference connection was problematic during the hearing, making the Parties and the Arbitrator somewhat difficult to hear at times; however, the Parties and I repeated ourselves when necessary, and I believe that we were able to hear and

understand 80 to 90% of what was said. I found that the teleconference line was clear enough to proceed with the hearing without any prejudice to any Party.

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2012, with a monthly rent of \$575.00 per Tenant, due on the first day of each month. The Parties agreed that each Tenant paid the Landlord a security deposit of \$250.00, and no pet damage deposit.

The Tenants submitted a copy of the Two Month Notice, with which the Landlord served the Tenants. The Two Month Notice:

- was signed and dated February 28, 2020;
- has the rental unit address;
- was served by leaving a copy in the rental unit mail box or mail slot on February 28, 2020;
- has an effective vacancy date of April 30, 2020;
- has the grounds being that 'all of the conditions for 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 close family member intends in good faith to occupy the rental unit.'

The Tenants said that Landlord did not issue the Two Month Notice in good faith, and that the Purchaser actually intends to renovate the residential property, and not merely move in when the Tenants vacate. The Tenants argue that the Landlord should have served them with a Four Month Notice to End the Tenancy for Renovations, not the Two Month Notice.

The Tenants submitted a screen shot of a building permit application dated February 26, 2020, for which the Landlord applied for the Purchaser ("Building Permit Application").

The Building Permit Application gives the address of the residential property and states the following under "Work Description":

Exterior and interior alterations and changes of use of the existing one-family dwelling to a one-family dwelling with secondary suite with two parking spaces provided in detached garage. Scope of work includes full interior renovation, structural work, replace all windows and cladding.

Note to PC (delete): Per [D.J.], no floor plan area being added, OK to process by PC1; full plan review and review new deck and bay windows.

Under the heading "Type of Work", the Building Permit Application says: "Addition/Alteration".

The Landlord said that the Purchaser will move into the property in May 2020. He agreed that there is a Building Permit Application with the City, but he said that it will take four to six months to process the application due to the pandemic. The Landlord said that the Purchaser asked him to apply for a building permit to do renovations; however, he said the renovations will be done as the Purchaser's financial resources allow over time.

The Landlord said that the permit could be in place and under the Purchaser's name, but that the renovations would not be required to be done for a year after the approval, before the permit expires.

The Landlord said that the Purchaser intends to repaint the residential property before moving in. The Landlord said:

This is to freshen the place prior to moving his family in. To me, painting the unit and changing the floors are cosmetic things. However, [the Tenants'] opinion of renovations is linked to the permit process. To clarify, those are to be done after they move in.

The Purchaser said:

Basically, I asked [the Landlord] to give the Tenants notice, because I want to occupy the unit. [The Landlord] believed it would be my intention to get the permit application started, because it can take many months, so we had to get it in earlier than later. Permits are valid for a year after approved. We would be doing renovations on a section by section basis as we're living there. We will do it in the future as we can afford to do so.

The Landlord said:

[The Purchaser] failed to mention the fact that his wife and him are expecting another child to be born in September. [The Tenants] could realize why the building permit renovations definitely will not be in place immediately, because I don't doubt that anybody in the right frame of mind will not be doing renovations when a newborn is in the house. So we wanted to get the [Two Month Notice] for April 30, and they will probably end up moving in by May 31, which will shorten time frame to move with a young family before the birth.

The Tenants said that time does seem to be of the essence for the Landlords and, understandably, things they want to do.

But from our view, it is our understanding that we are entitled to a four-month notice. I would note that [the Landlord] has an expectation that this wouldn't happen quickly, because of the pandemic. However, the building permit date is February 26 – they didn't declare emergency until March 18. So on Feb 26 – things were still operating relatively normally. A sense of urgency is shown in the request for [the Landlord] to end the tenancy with a Two Month Notice; in our view, he set the effective move out date a month earlier. Combined with our other concerns, the good faith is not being met.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Purchaser intends to “refresh” the residential property with minor, cosmetic renovations, such as painting and possibly new flooring, prior to moving in to the unit at the end of May 2020. I find that the Building Permit Application is based on the Purchaser’s long-term intention to renovate the residential property over the course of time, when his finances permit. I find that in this scenario, it was not necessary for the Landlord to issue a Four Month Notice to End the Tenancy for Renovations. Rather, I find that the Two Month Notice that the Landlord issued is appropriate. I find that the Tenants did not provide sufficient evidence to establish the Landlord’s bad faith in issuing the Two Month Notice.

I find that the Landlord submitted sufficient evidence to support the good faith issuance and validity of the Two Month Notice issued on February 28, 2020. I find that it is consistent with section 52 of the Act, as to form and content. I confirm the Two Month Notice and find that it is valid and enforceable. Therefore, I dismiss the Tenants’ application to cancel the Two Month Notice.

I find that the tenancy legally ends on the effective date of the Two Month Notice, which is April 30, 2020. I find the Landlord is entitled to an Order of Possession, pursuant to section 55 of the Act, effective April 30, 2020, at 1:00 p.m. This Order must be served on the Tenants and may be filed in the Supreme Court.

Given that the Tenants were not successful with their Application, I find they are not entitled to recover the \$100.00 Application filing fee from the Landlord.

Conclusion

The Tenants’ are unsuccessful in their Application to cancel the Two Month Notice issued on February 28, 2020. I find that the Landlord provided sufficient evidence to support the validity of the Two Month Notice and that it is confirmed.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on **April 30, 2020 at 1:00 p.m.**

after service of this Order on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 22, 2020

Residential Tenancy Branch