



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On February 27, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated February 20, 2020, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord, their Real-estate Agent (the “Landlord”), as well as one of the Tenant and their Advocate (the “Tenant”), attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice dated February 20, 2020, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

The parties agreed that the Notice was served on February 20, 2020, by posting it to the front door of the rental unit. The Notice indicated that the Tenant was required to vacate the rental unit as of May 1, 2020. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they had been living with their parents but that they are no longer able to live there and that they want to move into the rental property. The Landlord testified that they have moved out of their parents' home and are currently renting another place until they can get possession of their property back.

The Tenant testified that the property had been put up for sale in January 2020 and that the for-sale sign had not been taken down until after the Landlord had issued the Notice to end tenancy.

The Tenant testified that they had been able to locate several online listings for the property, showing that the property was still for sale and that they believe that the Landlord still plans to sell the property. The Tenant submitted five copies of online listings of the rental property into documentary evidence.

The Tenant also testified that they contacted one of the real estate agents, who had been advertising the property and that the agent had offered to arrange a showing of the rental property to them. The Tenant provided a digital recording of the phone call between them and the agent into documentary evidence.

The Landlord's real estate agent testified that they had cancelled the MSL listing for the rental property on February 20, 2020, at the request of the Landlord. The Landlord's real-estate agent also testified that real estate agents share each other listing on their

online ads and that it can take a while of other real-estate agents to remove ads from their online sites.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by the Tenant, that the Landlord served the Notice by posting it to the Tenant's door on February 20, 2020. Pursuant to section 90 of the *Act*, I find that the Tenant was deemed to have received the Landlord Notice to end the tenancy on February 23, 2020.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until March 9, 2020, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on February 27, 2020, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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.

I have reviewed all of the documentary evidence before me, and I find there is insufficient evidence to prove to me, that the Landlord had issued the Notice with ulterior motives. I acknowledge the Tenant's evidence of screen captures of online listings showing the rental property for sale and a digital recording of a phone call between them and a local real estate agent dated after the Notice was issued. However, I accept the explanation offered by the Landlord's real estate agent, that the property had been removed from MLS listing in February 2020, but that other agents had been slow in removing their online ads regarding the rental property.

In the absence of sufficient evidence, I must accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice dated February 20, 2020.

Pursuant to section 55 of the Act, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit.

I have reviewed the Notice, and I find the Notice dated February 20, 2020, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than two days after service on the Tenant.

I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy and the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Also, both parties were informed of their rights and responsibilities pursuant section 51 of the *Act*, regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51 (2) of the *Act*, which states the following:

Tenant's compensation: section 49 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The Tenant's Application to cancel the Notice, dated February 20, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. Should the Tenant 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: May 4, 2020

Residential Tenancy Branch