



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”);
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed or the notice is upheld, and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the hearing, as well as the Tenants’ documentary evidence, and the Tenants acknowledged receipt of the Landlord’s documentary evidence. Neither party raised concerns about the service, receipt, acceptance or consideration of this evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Settlement

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Order for the Landlord to Comply

In their Application the Tenants sought an order for the Landlord to comply with the *Act*, regulations, or the tenancy agreement but it was unclear from their Application what remedy they were seeking and what section(s) of the *Act*, regulations, or tenancy agreement they wanted the Landlord to comply with. In the hearing they stated that this was an overall request for the Landlord to comply with the *Act* and their tenancy agreement with regards to ending the tenancy and with regards to agreed upon repairs. As a result, I have not rendered a separate decision with regards to this ground and have instead considered the Landlord’s obligations to comply with the *Act*, regulations, or tenancy agreement when assessing the Tenants’ claims for cancellation of the Two Month Notice and a rent reduction for repairs, services, or facilities agreed upon but not provided.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the Two Month Notice?

If the Two Month Notice is upheld or the Tenants’ Application seeking cancellation of the Two Month Notice is dismissed, is the Landlord entitled to an Order of Possession Pursuant to section 55 (1) of the *Act*?

Are the Tenants entitled to compensation for repairs, services, or facilities agreed upon but not provided?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy began on May 16, 2018, that rent in the amount of \$3,200.00 is due on the first day of each month, that the tenancy has been periodic (month-to-month) since the fixed-term ended on May 16, 2019, and that a security deposit in the amount of \$1,600.00 was paid, which the Landlord still holds. A copy of the tenancy agreement was also submitted for my consideration.

The Landlord stated that they originally rented the property out to the Tenants as they work outside of Canada, and that as their work visa has regrettably not been renewed, they, their spouse, and their children are returning home and require the rental unit for their own occupation. As a result, the Landlord stated that the Two Month Notice was sent to the Tenants at the rental unit by registered mail on March 20, 2020, and in the hearing the Tenants confirmed receipt on March 25, 2020.

The Two Month Notice in the documentary evidence before me is electronically signed and dated March 20, 2020, contains the address for the rental unit, and states that the notice has been issued as the Landlord or their close family member intends in good faith to occupy the rental unit. The Two Month Notice is also in writing on the Branch form #RTB-32 (2020/02).

In the hearing the Tenants did not dispute or call into question that the Landlord intends, in good faith, to occupy the rental unit; instead they stated that they were surprised that the Landlord needs to reoccupy the rental unit as they were led to believe that this was a long term rental and that when they have spoken with the Landlord or their agent throughout the tenancy, they were advised that the Landlord was not planning to reoccupy the rental unit any time soon. They also stated that the Landlord had told them that they needed to reoccupy the rental unit due to the current pandemic situation in the country of their employment, not because their work visa had expired and questioned why they were not previously advised that the Landlord's visa would need to be renewed or its expiration date. Further to this, they stated in the hearing and in their Application that they are sheltering in place due to the current pandemic as recommended and that having to move will be exceptionally difficult due to the limited availability of rental accommodation currently on the market, difficulties posed to viewing prospective rental units by social distancing, and difficulty obtaining proof of income as their businesses are currently shut down. As a result, they stated that the effective date for the Two Month Notice should be after COVID-19 is resolved.

The Landlord denied advising the Tenants that they needed to move home due to the COVID-19 situation in the country of their employment but acknowledged expressing sympathy for the Tenants as their businesses have been impacted by COVID-19. The Landlord also stated that although they had hoped to stay with their employer outside of Canada for longer, the renewal of their work visa is not entirely within their control, as it is granted by their employer, and that although this situation is regrettable, they will be required to move home as they will no longer have employment in the country where they currently reside and cannot reside with their elderly family members upon their return to Canada as they are high-risk and must self-isolate after their return home. The Landlord stated that the Two Month Notice was served before the ministerial order came into effect prohibiting notices to end tenancy, and that it is therefore effective, and reiterated that they need to reoccupy their home.

The parties also agreed that the Tenants are owed \$1,095.00 for repairs and painting of a fence, thatching and reseeding of the lawn, and gardening services not rendered in September and October of 2019, and March, April, and May of 2020, in accordance with their tenancy agreement. The Tenants acknowledged that a new gardener attended last week, and as a result, they did not seek any additional rent reductions as they do not currently anticipate any future issues with having the gardening completed as required by the tenancy agreement.

Analysis

As the parties agreed that the Tenants are owed \$1,095.00, I find that the Tenants are therefore entitled to compensation from the Landlord in the amount of \$1,095.00 pursuant to section 67 of the *Act*.

Section 49 of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In the hearing the Landlord stated that they served the Tenants with a Two Month Notice for this purpose by registered mail on March 20, 2020, and the Tenants confirmed receipt on March 25, 2020. As a result, I find that the Tenants were served with the Two Month Notice on March 25, 2020.

Although the Tenants argued that the Two Month Notice should not be effective until after COVID-19 has been resolved, *Ministerial Order M089* issued March 30, 2020, states that notices to end tenancy served before the date of the order remain in effect. As I have already found above that the Two Month Notice was served on

March 25, 2020, and the date of the order is March 30, 2020, I find that the Two Month Notice is not invalid or of no force or effect for the purpose of the *Act* as a result of the date it was issued or the current state of emergency.

Although the Tenants were dissatisfied with service of the Two Month Notice as they were led to believe that this would be a long-term rental situation, the parties were in agreement that the tenancy has continued on a month-to-month basis since the end of the fixed-term on May 16, 2019, and as a result, I find that the Landlord was not prohibited under the *Act* from serving a Two Month Notice with an effective date of June 30, 2020. The Tenants also questioned whether the Landlord's need to reoccupy the rental unit arose as a result of an end to their work visa as stated, or the COVID-19 situation in the country of their employment. However, the *Act* clearly states that Landlords may serve a Two Month Notice and end the tenancy if they intend in good faith to reoccupy the rental unit. I find that there is no requirement under the *Act* for me to be provided with the exact and complete reasons *why* the Landlord intends to reoccupy the rental unit or that I be satisfied that any reasons given represent all the possible reasons for reoccupation in order for the Two Month Notice to be valid, as long as I am satisfied on a balance of probabilities that the Landlord intends in good faith to occupy the rental unit.

Based on the testimony of the Landlord in the hearing, and the absence of any evidence or testimony that the Landlord does not intend in good faith to occupy the rental unit, I find that I am satisfied on a balance of probabilities that the Landlord had grounds to serve the Two Month Notice as they intend in good faith to occupy the rental unit. As a result, I dismiss the Tenant's Application seeking cancellation of the Two Month Notice without leave to reapply.

Based on the above, and as I find that the Two Month Notice complies with sections 49 (2) and 52 of the *Act*, I therefore find that the Landlord is entitled to an Order of Possession for the rental unit effective 1:00 P.M. (Pacific Time) on June 30, 2020, pursuant to section 55 (1) of the *Act*. Pursuant to section 51 (1) of the *Act*, the Tenants are entitled to receive from the Landlord on or before the effective date of the Two Month Notice, June 30, 2020, an amount that is the equivalent of one month's rent payable under the tenancy agreement or to withhold their last months rent in lieu of this compensation.

As the Tenants were only partially successful in their Application, I award them recovery of only \$50.00, 50% of the \$100.00 filing fee, pursuant to section 72 of the *Act*. Pursuant to section 67 of the *Act* the Tenants are therefore entitled to a Monetary Order in the

amount of \$1,145.00 for compensation owed and recovery of 50% of the filing fee. The Tenants are entitled to deduct this amount from any rent owed, should they wish to do so, in lieu of serving and enforcing this Monetary Order, or to otherwise recover this amount from the Landlord.

Conclusion

The Tenants' Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply.

Pursuant to section 55 (1) of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. (Pacific Time) on June 30, 2020, 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.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$1,145.00**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 28, 2020

Residential Tenancy Branch