



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use of the Property dated March 26, 2020 ("Two Month Notice"), to suspend or restrict the Landlord's right to enter, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The Tenants, S.G. and S.G., and the Landlords, A.B. and M.B., 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 Landlords 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.

Early in the hearing, I enquired about the service of the Notice of Hearing documents and documentary submissions exchanged. 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. However, later in the hearing, the Landlord, A.B., questioned whether he had received all of the Tenants' documentary submissions, and I have addressed this matter later in the Decision.

Preliminary and Procedural Matters

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.

Before the Parties had provided testimony, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this case, the Tenants had indicated different matters of dispute on the Application, the most urgent of which is the Application to set aside a Two Month Notice. I found that not all the claims on the Application were sufficiently related to be determined during this proceeding. I told the Parties that I would, therefore, only consider the Tenants' request to set aside the Two Month Notice at this proceeding. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

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?
- If the Two Month Notice is confirmed, are the Landlords entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 24, 2016, with a current monthly rent of \$1,283.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$600.00, and no pet damage deposit.

The Parties agreed that the Landlords served the Tenants with the Two Month Notice, which was signed and dated March 26, 2020, it has the rental unit address, was served by attaching a copy of the Notice to the rental unit door on March 26, 2020, with an effective vacancy date of May 31, 2020. The ground for the eviction checked on the Two Month Notice is that: "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 close family member intends in good faith to occupy the rental unit."

The Landlords said that they sold the house and that the buyer asked them to serve the Two Month Notice on the Tenants, because the buyers wants to occupy the rental unit. The Landlords submitted a document entitled: "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession". This document states that:

The undersigned buyer [D.P. ("Buyer")], and the Sellers [Landlords] have entered into the Contract of Purchase and Sale dated March 3, 2020, in respect of the purchase and sale of the above-noted Property [residential property address].

...

NOW THEREFORE in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the 'Tenant Notice') to the tenant(s) to vacate the Property by 1:00 pm on May 31st 2020.

...

This document was signed and dated March 26, 2020 (Tenants' Notice").

The Landlords also submitted a copy of a bank draft from the Buyer to a company that the Landlords say is their realtor. The cheque is for \$40,000.00 and has the handwritten note below the bank draft saying: "Deposit draft for [residential property address], please acknowledge receipt" ["Bank Draft"].

The Tenants said that there are "many reasons" why I should cancel the Two Month Notice. The Tenant, S.G., said that she consulted a lawyer who told her that the documents the Landlords gave her were not notarized by a lawyer or notary, and are just papers that the Landlord wrote on. The Tenant said that the lawyer told her that there should be at least 15 pages of documents for the sale of a house.

The Tenant said:

I have questions that it's not in good faith – I believe it is not true. The people who came through here were discussing that they were wanting to lease the upstairs, and that we're fine downstairs. I received [the Two Month Notice] on March 31 at 5 pm, and before that was the Covid problems, so I believe this is not a contract.

Two years ago, when he was asking for \$800 for a raise in rent, he said he can get students in here and make more money. I'm struggling, I was sick for three months with a bronchial lung infection. It's a hard time for me right now. I did a land title search last month that it's still in [the Landlords'] name. The \$40,000.00 is a year of rent they're paying up front.

With the numerous people who have come through my place, they've not given proper notice. They just show up at my door. Just two weeks ago, someone

came to see the place. I thought it was sold on March 3rd?

The Landlords said that the Two Month Notice and the Tenants' Notice, are the only documents, which he is required to give to the Tenants in this regard.

Analysis

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

The Tenants disputed the Two Month Notice on various grounds. First, they said that the Landlords did not serve them with a sufficient number of documents involving the sale of the residential property. However, they did not specify an authority for this position or how it is consistent with the Act. Therefore, I find that this argument fails.

The Tenants also said that the documents they received from the Landlords were not notarized and are, therefore, invalid. The Tenants did not specify, and I am not aware of any section of the Act or regulation that requires these documents to be notarized. Therefore, I find that this argument fails.

The Tenants disputed the Two Month Notice by stating that the Landlords did not give the it in good faith, because of comments made by people coming through the rental unit when it was for sale by the Landlords. The Tenants have not provided any evidence to establish that they were party to the contract negotiations of the Landlords and the Buyer. I find that discussions people have while viewing a residential property are not conclusive evidence of the parties' final contract agreement. I find that the Tenants have not provided sufficient evidence that the Landlords and Buyer were not acting in good faith in this matter. Therefore, I find that this argument fails.

The Tenants said that they received the Two Month Notice on March 31, 2020, and that because of Covid, the contract is invalid. As I advised the Parties in the hearing, during the State of Emergency over Covid-19, the Order of Possession may not be enforceable in court. However, the State of Emergency is renewed every two weeks. There is no indication as to how long it will remain in place; therefore, the Tenants are advised to prepare for an order of possession to be enforceable at any time.

Section 49 of the Act sets out the various ways in which a landlord may choose to use the property, other than as a rental unit. Section 49(5) addresses a landlord choosing to sell the residential property, wherein the purchaser wishes to occupy the rental unit.

- 49 (5)** A landlord may end a tenancy in respect of a rental unit if
- (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;

Based on the evidence before me, I find that the Landlords have sold the residential property, and that the Buyer asked the Landlords in writing to give notice to end the tenancy, because the Buyer intends to occupy the rental unit.

I find that the Tenants have provided insufficient evidence to satisfy me on a balance of probabilities that the Landlords or the Buyer have acted in bad faith in the documents given and the intentions stated, nor that the purchase contract or the Two Month Notice are invalid. I find that the Two Month Notice is valid and I confirm it pursuant to section 49 of the Act.

Given the above, and that I find the Two Month Notice to be consistent with section 52 of the Act as to form and content, **I grant** the Landlords an **Order of Possession** pursuant to section 55 of the Act. I find that the Order of Possession will be effective **two days** after service of it on the Tenants, as the effective vacancy date of May 31, 2020 has already passed.

As the Tenants' Application did not have merit, I do not grant them recovery of the \$100.00 cost of their Application filing fee.

In addition, **I dismiss** the Tenants' application to suspend or restrict the Landlords' right to enter, and for an order directing the Landlords to comply with the Act, regulation or tenancy agreement **without leave to** reapply. I find that these claims are now moot, as the tenancy ended on May 31, 2020.

Conclusion

The Tenants' Application is wholly unsuccessful. Their Application to cancel the Two Month Notice is unsuccessful, because they did not provide sufficient evidence that the

Landlords' and the Buyer are not acting in good faith with their intentions regarding the Two Month Notice. The Two Month Notice is upheld and is confirmed.

The Landlords are granted an Order of Possession effective **two days after** service on the Tenants, pursuant to section 55 of the Act.

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: June 1, 2020

Residential Tenancy Branch