



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPC
For the Tenant: CNL, OLC, MNDCT, RP, LRE

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Tenants filed a claim for:

- an Order cancelling a Two Month Notice to End the Tenancy for Landlord’s Use, dated June 25, 2020 (“Two Month Notice”);
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- a monetary order for damage or compensation under the Act in the amount of \$200.00;
- for an order for regular repairs; and
- to suspend or restrict the Landlord’s right to enter.

The Landlord filed a claim for:

- an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated July 14, 2020 (“One Month Notice”).

The Tenants, the Landlord, and the Landlord’s son, P.F., a witness for the Landlord (“Witness”), 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 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. I advised the Parties

that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

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 Parties provided their email addresses in their applications and confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the outset of the hearing, the Landlord advised that he had withdrawn his application for an Order of Possession for Cause, based on the One Month Notice, because the Tenant has complied with previous orders. Accordingly, I dismiss the Landlord's application without leave to reapply.

Rule of Procedure 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on their application, the most urgent of which is the application to set aside the Landlord's Two Month Notice. As I advised the Parties prior to them giving testimony, I find that not all the claims on the Tenants' application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the Two Month Notice at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession, if the Two Month Notice is confirmed?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 15, 2019, with a monthly rent of \$1,000.00, due on the first of each month. They agreed that the Tenants paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

In the hearing, the Landlord said that the Two Month Notice was signed, dated and served on June 25, 2020, by placing it in the Tenants' mail box/slot. The Two Month Notice has the rental unit address, and an effective vacancy date of August 31, 2020, with the grounds being that 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 Tenant said that he thought the Landlord had served the Two Month Notice "in retaliation. In spite now." The Tenant went on to say:

He issued the Two Month Notice after we applied to the RTB - after we applied about the van. Then we started to get an eviction notice, and him calling the city to look if the dog was licensed, and about an unsightly yard, if our vehicles are licensed. We had parking tickets, and he cut off our internet, while the bill was paid. Everything was done out of spite. We don't believe his son is moving in. 'You'll pay for it,' he says. He's quite aggressive in his mannerisms with us. The van has been moved, and all has been done now.

The Landlord then read a letter he submitted in defense of the Tenants' application to cancel the Two Month Notice and about the Tenants' comments about the Landlord. The Landlord mentioned that he is a family physician in the rental unit locality. The Landlord addressed much of the issues that have been going on between the Parties. He said:

I do not yell or verbally threaten. My years working with difficult and threatening personalities have taught me that communication and patience are the best ways to negotiate.

In terms of the Two Month Notice, the Landlord said in his letter:

With the above all being said, the 2 month notice to end tenancy for landlord's use of property is a separate issue necessitated for family reasons, which I would be happy to communicate separately with the RTB. While the appellants may feel this decision is based on 'spite' and 'retaliation', there are more relevant and pressing family reasons for this notice.

Respectfully submitted.

[S.F.]

Landlord: [rental unit address]

I advised the Landlord that it is not appropriate for me to hear anything from him that is not shared with the Tenants. As such, the RTB has not heard anything from the Landlord separate from the Tenants.

The Witness said that he starts work in the rental unit city on September 25, 2020. He said: "This has been in the pipeline for a while. I have a loan forgiveness program, do a work stint here. I will be ready to move in any time. I have no plans to go anywhere else." The Witness said that he was born and raised in this town.

The Tenants said that it is a big property. "There are multiple units empty now – why here, since there are vacancies on the property? He can easily move there. We have a family here, a daughter."

When asked why he wanted to move into the rental unit, rather than other units, the Witness said:

Primarily, my lifestyle. I'm 33 and have an active lifestyle. I'm not interested in sharing or renting a bedroom within a house that's going on in other places the tenant mentioned. It definitely fits my lifestyle here with the vehicles I have.

The Landlord said that other vacancies have "...just one single room – they are not suitable." The Landlord said that his son does not want to disclose his work.

He has a lot of responsibilities, and he has a relationship. It's none of [the Tenant's] business to ask questions like that. Otherwise, it's commercial real estate, not accommodation. It's commercial space and illegal to have someone living in there.

Analysis

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

A landlord may end a tenancy pursuant to Part 4 of the Act. Section 49 sets out how a landlord may end a tenancy for the landlord's use of the property. Section 49(3) states:

49 (3) 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.

While the Tenants testified that they believe the Landlord served them with the Two Month Notice out of spite or retaliation, I find that the Landlord has provided sufficient evidence to the contrary. I find that other matters between the Parties were dealt with in other RTB proceedings. I find that the matter before me solely involves the validity of the Two Month Notice.

Based on the evidence before me overall, I find it more likely than not that the Landlord's son is moving back to the area and needs a place to live. I find it is appropriate that the son moves into the rental unit, despite there being other, less appropriate, vacant units available to potential tenants.

I find that the Two Month Notice is compliant with section 52 of the Act and that it is a valid, enforceable notice to end this tenancy.

Based on the above and on the balance of probabilities, I find that the Landlord has met the burden of proof and I find the Two Month Notice issued by the Landlord to be valid. Therefore, **I dismiss** the Tenants' application to cancel the Two Month Notice and **I uphold** the Two Month Notice issued by the Landlord with an effective vacancy date of August 31, 2020. Section 55 of the Act applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account that I find that the Two Month Notice complies with section 52 of the Act, **I grant** the Landlord an Order of Possession effective **two days** after service on the Tenants, as the effective vacancy date of August 31, 2020 has already passed.

Conclusion

The Tenants are unsuccessful in their application to cancel the Two Month Notice. I found that the Landlord provided sufficient evidence to support the merits of the eviction notice, and I found that the Two Month Notice is valid and enforceable, pursuant to the Act. The Tenants' application to cancel the Two Month Notice is dismissed.

I grant the Landlord an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and may be enforced as an Order in the Supreme Court of British Columbia.

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: September 11, 2020

Residential Tenancy Branch