



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, LAT, LRE, FFT

Introduction

On September 7, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

H.C. advised that the Landlord was served with the Notice of Hearing package and some evidence by registered mail on September 14, 2020. Further evidence was served to the Landlord by registered mail in October 2020. They did not check to see if the Landlord could view their digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. The Landlord confirmed that he received the Tenants' evidence and that he "did not bother to watch" the Tenants' digital evidence even though he had the ability to do so. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package. Furthermore, I am satisfied that the Tenants' evidence was served to the Landlord. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he sent his evidence to the Tenants by courier; however, he is not sure when he did this. He did not check to see if the Tenants could view his digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. H.C confirmed that they received this evidence on October 19, 2020 and that they were able to listen to the Landlord's digital evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served to the Tenants. As such, I have accepted this evidence and will consider it when rendering this Decision.

During the hearing, I advised the Tenants that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that their other claims would be dismissed, and that they are at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2006 as a month to month tenancy. A written tenancy agreement was not signed at that time. On April 20, 2020, a tenancy agreement was signed and backdated for the tenancy to commence on April 1, 2012. Rent is currently established at \$1,300.00 per month and is due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that he served the Notice by hand on August 27, 2020 but H.C. confirmed that this was actually served by hand on August 29, 2020. The reason the Landlord served the Notice is because "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 Landlord also checked off that "The landlord or the

landlord's spouse" would be the person/people occupying the rental unit. The Notice indicated that the effective end date of the tenancy was October 31, 2020.

The Landlord advised that the reason he would be moving into the rental unit is because of the deterioration of his relationship with his partner in early 2020. Since March 2020, he has been living alternately with his cousin and/or with his business partner. Neither of these places are a permanent residence for him. As such, he wants to move in and occupy the rental unit for his own use. In addition, he is suffering from a number of health issues and would like to have a permanent home to live in to manage these health concerns. Due to the COVID pandemic, he was not able to serve this Notice sooner.

H.C. advised that they have doubts that the Landlord would be occupying the rental unit because there has been an ongoing confrontation about the installation of cameras and a garage issue. However, they did not make any direct submissions with respect to disputing the Landlord's testimony that he would be moving into the rental unit, other than submit that it was their belief that he would not be moving in.

The Landlord stated that he had never raised the rent on the Tenants in the 14 years that they lived there. Had this been a matter of him simply wanting more rent, he had ample opportunities to raise the rent throughout the tenancy.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

When reviewing the limited testimony and evidence before me, I am satisfied on a balance of probabilities that the Landlord will be using the property, in good faith, for the stated reason on the Notice. As such, pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 PM on October 31, 2020** after service of this Order on the Tenants. The Landlord will be given a formal Order of Possession which must be served on the Tenants. If the Tenants do not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

The parties were reminded of the one month's rent compensatory requirements of Section 51(1) of the *Act* that is due to the Tenants because this Notice was served. In

addition, the parties were reminded of the 12 months' rent compensatory requirements of Section 51(2) of the *Act* if the Landlord does not use the property for the stated purpose within a reasonable period after the effective date of the Notice.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenants' Application, and the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property of August 29, 2020 is still effective.

The Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on October 31, 2020** after service on the Tenants. Should the Tenants or any occupant on the premises 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: October 28, 2020

Residential Tenancy Branch