



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On November 9, 2020, the Tenants 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”) issued October 31, 2020, and to recover the filing fee for their application. The matter was set for a conference call.

One of the Tenants, the Tenant’s Advocate (the “Tenants”), the Landlord, and the Landlord’s Attorney (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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.

Preliminary Matter - Tenants’ Advocate phone line Muted

At the end of these proceedings, when this Arbitrator attempted to deliver a verbal decision, the Tenants’ Advocate attempted to disrupt the delivery of the decision by loudly speaking over this Arbitrator. When this Arbitrator advised the advocate of the inappropriateness of their behaviour, the Advocate continued to disrupt these proceedings and the delivery of the final decision.

Due to the conduct of the Tenants' Advocate, the phone line for the Tenant and their Advocate was muted during the delivery of the final decision for these proceedings.

Issues to be Decided

- Should the Notice issued October 31, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants' application records that the Notice was served on October 31, 2020, by posting it to the front door of the rental unit. The Notice indicated that the Tenants were required to vacate the rental unit as of January 1, 2021. The reason checked off by the Landlord within the Notice was as follows:

- 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).

Please indicate which close family member will occupy the unit.

- The landlord or the landlord's spouse.

The Landlord testified that they purchased the property in September 2020, taking possession November 1, 2020. The Landlord testified that the rental property currently consists of two separate units, both of which had been tenanted when they purchased the property. Each of the units are approximately 650 square feet and have two bedrooms each.

The Landlord testified that it is their intent to end both the tenancies and turn this property into a single-family home for themselves, their wife and their two young children. The Landlord testified that due to the small size of the units on this property, they would need to renovate, adding a staircase, in order to join the two separate units into one home. The Landlord testified that this would be given to them three-bedroom and a home office on this property.

The Landlord testified that the renters in the upper unit have already moved out and that they have sourced a contractor to start the renovation to that unit but are waiting to commence until this tenancy has ended, as they did not want to disturb these tenants with the noise of construction.

The Tenant testified that they do not believe the Landlord had issued the Notice in good faith as there is no way these two units can be made into one home and that it is unreasonable to think that the Landlord would allow one of their young children to live in a separate unit that they would have to go outside to access them In this separate unit.

The Tenant also testified that they received a letter from the Landlord stating that as of November 1, 2020, they were occupying the upper rental unit, but that, in fact, the Landlord had not moved in and was not occupy that space.

The Landlord testified that they and their family are currently residing in a two-bedroom condominium and that this is too small to house their growing family. The Landlord testified that they want to move their family to the rental property as it will give them more room and a yard for their children.

The Landlord testified that they have not decided what to do with their condominium once they move to the rental property.

Analysis

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

I accept the documentary evidence provided by the Tenants, that the Landlord served the Notice by posting it to the Tenants' door on October 31, 2020. Pursuant to section 90 of the *Act*, I find that the Tenants were deemed to have received the Landlord Notice to end the tenancy three days later, on November 3, 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 November 18, 2020, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on November 9, 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 Tenants' arguments that the construction of this rental property would make it difficult for the Landlord to occupy both the upper and lower rental unit at the same time. However, I accept the explanation offered by the Landlord that the property will be renovated to include a stairway between the two-unit, making this into a single-family home.

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 Tenants' application to cancel the Notice issued October 31, 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 issued October 31, 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 Tenants.

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 Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the filing fee paid for this application.

Conclusion

The Tenants' Application to cancel the Notice, dated October 31, 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 Tenants. The Tenants must be served with this Order. Should the Tenants 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: February 1, 2021

Residential Tenancy Branch