



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated October 24, 2020 ("Two Month Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of their Application filing fee.

The Tenants and the Landlord 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 Tenant and the Landlord 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.

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 Tenants provided the Parties' email addresses in the Application and the Parties confirmed these addresses 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.

Before the Parties' testified, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants

indicated different matters of dispute on the application, the most urgent of which is the application to set aside a Two Month Notice. I find that not all the claims on the 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, and the recovery of the filing fee at this proceeding. The Tenants' other claim is dismissed, without leave to re-apply.

At the outset of the hearing, 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.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

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?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on January 1, 2017, with a monthly rent of \$2,750.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$1,350.00, and a pet damage deposit of \$675.00.

The Landlord served the Tenants with a Two Month Notice that was signed and dated October 24, 2020; it has the rental unit address, and it was served by leaving a copy in a mailbox or mail slot at the address where the Tenants ordinarily reside. The Two Month Notice has an effective vacancy date of December 31, 2020, and it was served on the ground that the rental unit will be occupied by the Landlord and his close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Landlord said:

We planned to move to the rental unit for downsizing. We are planning to move from our current house to the rental house. The primary reason for downsizing is to save money. This could help us to improve our financial situation.

The other reason is my other son moved - he graduated from high school last year - so we don't have to live in our current house, which is walking distance to his school. This is our reasons for downsizing.

In answer to when the Landlord needs to move to the rental unit, he said:

As soon as possible. We are planning to rent out our current house. We have posted it and our rental advertising is in progress. We have around ten candidates who are interested in this house. One difficulty is the moving date cannot be set so far, so we have to wait for your Decision, and sign the rental agreement with the candidate.

Our current house is \$4,500.00 per month. If we cannot move to the rental house, we will lose \$1,750.00 every month.

The Tenants said:

[The Landlord] initially contacted us every year via text re renewing the lease. We usually negotiate the lease terms and rent amount. But because of our reduced work hours and Covid, we tried to negotiate a reduced rent, given Covid and me being an essential worker. Instead of renewing the lease, he's moving into the home. We wanted to find out more information. We asked for relief, but he now wants to move in to the home. We want to clarify his intention. He initially wanted to renew the lease, and then when we asked for compensation, he suddenly wants to move in.

We wanted to find a home, but because of Covid, I'm on reduced hours - it's hard to find a rental unit. His reasons for moving into the home are not immediate, so we're asking for a couple more months to find a place to live.

The Landlord said he already offered the Tenants a few more weeks, but he said that they did not reply to this offer. The Tenants said they recalled this offer, but they said:

The relationship has degraded, as when are talking to him, he calls us liars. We weren't Without talking with us first, he sent an email that maybe he'll give us two more weeks. But the relationship had degraded, and we didn't trust him any further. Finding accommodation and having a child is stressful.

I'd just like to say that he wanted to renew the lease, we said yes, and asked if we can lower the rent. We took our time and sent him long emails, and it is extremely difficult, we were thrown off guard. We tried to work this out before we applied for a dispute resolution. We tried to solve it – it's winter, this is Covid, we don't have family to turn to here.

Before that email [the Landlord] sent us, the RTB said the Landlord has to move in, in a reasonable amount of time. We asked him when he was planning on moving in. His response was January 1. We asked for more time, and he sent us a one-line email in which he said 'January 1 and you move out'. Then he said 'maybe a few weeks.'

The Landlord said:

Actually, the Tenants say a lot of things that I don't think is true. Our communication is very simple through text or email. I uploaded almost every text.

I can recall the process, the first time I contacted them about this issue is October 17 - see evidence #1 – next year's plan. In this file I asked them what the plan was for next year. Based on this text, the tenants say I requested to renew the agreement. This is not true. So, you can simply see that file. And then on the file of #2 telling our plan, I got to tell them that I want to move into the rental unit, and I will have to see what is their thoughts. Very simple.

But according to their statement. I changed my mind; I tried to request to renew the lease agreement, but that's not true. That's why I started another claim. The Tenants' first statement to create this dispute. Basically, this is what I want to say.

The Tenants said:

In [the Landlord's] evidence and our evidence about the text message, in his first text message he used the words 'rental renew', so his bringing up that he didn't bring up the rent renewal... why didn't he contact us and say this is our plan, this

is what we are thinking? This is what he does every year. He didn't say he was planning on moving in. Instead he texted us and said rent renewal.

When we did contact him about the lease, he said he would think about reducing the rent, and then he took days to say his plan all along was to move into the home; it doesn't make sense to us.

[The Landlord] lives one block away, and his move is not difficult. I believe this is a way to get around the lease agreement

Both Parties submitted a copy of the Landlord's text to which they referred. It states:

Hi [Tenant], I hope you are doing well. I am just wondering what's your plan next year if you're planning for the rental renew? Please let me know your thoughts. Thanks. Have a nice day.

The Parties' further exchanges were:

Hi [Landlord], We hope you are well too. We'd like to renew our lease. Are you able to reduce the rent amount due each month? With Covid-19, both of our work hours and income have been reduced. And mortgage rates have also dropped since Covid-19, since that's why you raised our rent last year. Anything you can do to help with our financial stress during this difficult time is much appreciated. Thank you.

Hi [Tenant], thanks for your quick response. We will think about that and get back asap. Thank you.

Hi [Tenant], after a long discussion with my wife, we are sorry to let you know that we finally decided to move to the house you're living because we would like to downsize as my older son will go to Toronto for his university life next year. That means we could not renew the rental agreement with you next year. You're good tenants and we really appreciate your cooperation in past 4 years. I will email you the formal notice later. Again, thank you very much for your understandings. Have a nice day.

The Tenants said they paid rent in December, January, and February. "We paid rent on time for the last four years," they said.

Analysis

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

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. Section 49 also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

Accordingly, I find that the Landlord has the burden of proving the validity of the Two Month Notice on a balance of probabilities.

I find that the Tenants' position was that the Landlord did not have good faith in serving the Two Month Notice, given his initial text implying that he was interested in signing another tenancy agreement with them. I find this was a reasonable conclusion for the Tenants to have made, based on the Landlord's wording in the text. However, I also find that the Landlord's explanation as to why he wished to end the tenancy was compelling. I find on a balance of probabilities that the Tenants failed to provide sufficient evidence that the Landlord was not acting in good faith in issuing the Two Month Notice.

Accordingly, and based on the evidence before me overall, I find that the Two Month Notice is valid and consistent with section 52 of the Act, as to form and content. I, therefore, confirm the Two Month Notice and dismiss the Tenants' Application wholly without leave to reapply.

I note that the Landlord has not provided the Tenants with their entitlement to receive the equivalent to one month's rent payable under the tenancy agreement, pursuant to section 51(1) of the Act.

Further, section 51(2) sets out a tenant's potential compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I advised the Parties of these provisions of the Act for their information. If necessary, the Tenants may apply to the RTB for the compensation provided for in section 51 of the Act.

However, for the purposes of this Application, I find that the Tenants have failed to provide sufficient evidence to establish on a balance of probabilities that the Landlord has not served the Two Month Notice in good faith, pursuant to section 49(3). I dismiss the Tenants' Application wholly.

Therefore, I confirm the Two Month Notice and I grant the Landlord an Order of Possession, effective February 28, 2021, pursuant to section 55 of the Act.

Conclusion

The Tenants are unsuccessful in their Application to cancel the Two Month Notice, as they provided insufficient evidence that the Landlord was not acting in good faith when he issued a Two Month Notice to end the tenancy. The Tenants' Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on February 28, 2020 at 1:00 p.m. **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.

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: February 02, 2021

Residential Tenancy Branch