



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNL

Introduction

The tenants seek an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"). I note that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

Attending the hearing on April 26, 2021 was one of the tenants, the tenant's friend (who assisted), and the landlord. No issues of service were raised by the parties.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on November 1, 2019. Monthly rent is \$1,950, which is due on the first day of the month. The tenants paid a security deposit of \$950. No written tenancy agreement was submitted into evidence.

On January 27, 2021, the tenants received the Notice by registered mail. They filed an application for dispute resolution on January 28, 2021, in which they state that they intended to dispute the Notice because, "I believe the landlord not planing [*sic*] to use this property for his or her use."

A copy of the Notice was submitted into evidence, along with two documents titled “Landlord moving plan” and “2nd moving plan.” The landlord testified that they served all four pages of the Notice, though only two pages were submitted into evidence.

The landlord’s testimony basically reiterated the information contained in their moving plans: they are working as a manager in a hotel out of province, that hotel has suffered a 70% drop in revenue (due to the pandemic), the hotel’s owner intends to take over the landlord’s position at the hotel, and the landlord needs to return to, and live in, their property.

The tenant did not dispute that the landlord intends to occupy the rental unit. Rather, the purpose for the dispute was to allow for sufficient time to find a new home. They “didn’t have a problem moving out,” but, the tenant is not working and was having a very hard time finding an affordable place.

The tenant and their friend testified that new accommodations have now been secured, but the occupancy date on that rental unit is at the end of June. They submitted that *maybe* they will be able to occupy the new accommodation as early as June 15, but this is uncertain. In any event, they requested that the longest they would like to remain in the rental unit would be June 30, 2021.

The landlord was not unsympathetic to the tenant’s situation, but they also find themselves in a position of being out of work and having to move back. In final submissions the landlord stated that June 15 is the absolute latest move out date.

Analysis

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.

Section 49 of the Act allows a landlord to end tenancy for, among other reasons, the landlord intends to occupy the rental unit. They end the tenancy by issuing a Two Month Notice to End Tenancy for Landlord’s Use of Property.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The landlord gave evidence that they intend to occupy the rental unit. The tenant, while disputing this in their application for dispute resolution, did not argue or dispute this during the hearing. Rather, the tenant simply needs time to find new and affordable accommodation.

Taking into consideration all the oral testimony and documentary evidence presented before me, and, applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued.

Therefore, I dismiss the tenants' application to dismiss the Notice.

Section 55(1) of the Act states that

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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

In this dispute, I have thoroughly reviewed the Notice and find that it complies with section 52 of the Act.

The parties' individual difficult situations do not escape my sympathies, and I find that both are making the best of the circumstances. It is also not lost on me that the tenant appears to have done their best in apartment hunting. Likewise, I am mindful of the landlord's own situation requiring them to leave the hotel, where they have been employed for the past 7 years and return home. The commonality between the parties is that of the date of June 15: it is the absolute last date that the landlord can move into the property, and it is the absolute earliest possible date that the tenant can vacate.

For these reasons, I order that the tenancy is to end on June 15, 2021. Issued in conjunction with this Decision is an order of possession for the landlord, reflecting this date. The order of possession must be served by the landlord on the tenants no later than May 15, 2021.

Finally, I would draw the parties' attention to [section 51\(1\)](#) of the Act regarding the tenant's compensation in respect of the Notice.

Conclusion

The tenants' application is dismissed.

I grant the landlord an order of possession, which must be served on the tenants and which shall go into effect on June 15, 2021 at 1:00 PM. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 26, 2021

Residential Tenancy Branch