



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on April 1, 2021 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 13, 2021.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that either side provided in advance. On the basis that both parties received relevant disclosure from the other, I proceeded with the hearing.

Preliminary Matters

The landlord provided evidence that they did not disclose to the tenant. On careful review with the parties, I determined that these pieces had either marginal value to the dispute or concerned a different issue of unpaid rent. I clarified with the parties in the hearing that the matter of unpaid rent is not the subject of this review and was not the reason for the landlord issuing the Two-Month Notice. I decline to consider this evidence after determining it is not relevant. This is an application of Rule 3.6 of the *Residential Tenancy Branch Rules of Procedure*.

At the beginning of the hearing, the representative for the tenant requested an adjournment in this matter. They provided a copy of the contract of purchase and sale for the rental unit property. This contract is the subject of their Notice of Civil Claim that they filed in the Supreme Court of BC on February 25, 2021. They asked for an adjournment until that claim is resolved in that forum.

The criteria for granting an adjournment are set out in Rule 7.9 of the *Rules*. To be clear, the matter before me concerns neither the ownership of the rental unit property, nor the validity of the contract of purchase and sale. I find that an adjournment in this matter would not result in a resolution of the matter of the Two-Month Notice.

Additionally, the tenant could not give an estimate of the timeframe involved for the civil claim; an indefinite holdover of this type with a high likelihood of further requests for adjournments would be prejudicial to the interests of the landlord concerning this tenancy. For these reasons, an adjournment is not granted.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Two Month Notice?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed the evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement; however, they did not disclose this to the tenant. For the tenant's benefit, I reviewed the terms of the agreement with the parties and the tenant was thus able to confirm details. The parties signed the agreement on February 12, 2020 for the one-year term starting on February 15. The basic amount of rent was \$2,000 payable on the first of each month.

The fixed term of the tenancy agreement ended on February 15, 2021. The parties clarified that the agreement was not renewed at that time because the tenant understood they would become the owner of the property in March 2021. The landlord added that the tenant has not paid rent since that time. The tenant added that the

landlord had acknowledged they would continue to reside there until the purchase completion in March 2021.

The landlord issued this Two-Month Notice on March 20, 2021. Both parties provided a copy of the document in their evidence. It provides the move out end-of-tenancy date as May 20, 2021. The landlord specified in the hearing that this date shall be amended to June 1, 2021.

Page 2 of the document shows the landlord's indication that "The rental unit will be occupied by the landlord or the landlord's close family member . . .". They gave the additional detail that father or mother would occupy the unit.

The landlord provided separate affidavits from each of the mother and father to explain the issue from their perspective. Both affidavits contain the following details:

- on March 3, 2021 they asked the landlord (who is their son) to move into the upper rental unit – they currently reside in the lower unit with another son;
- one parent has health concerns for which the walk-in shower in the upper unit will alleviate difficulties;
- the other parent has weak eyesight and would benefit from more light in the upper unit;
- as well, the unit has more space and access to fresh air that will be of more benefit overall;
- the landlord informed their parents they could move into the unit; however, the current tenant remains and is "unwilling to leave."

The tenant submitted that the account reveals one facet of the landlord's bad faith where they had the conversation with their parents on March 3 while the completion date for the sale of the property was March 23. This reveals an ulterior motive where the landlord had signed a contract of purchase and sale on January 5, then making a promise to the parents on March 3. The tenant submits that in essence the Two-Month Notice was issued in bad faith.

Additionally, the tenant questioned whether the amenities in the current lower unit were truly lacking for the landlord's parents. It contains two bathrooms, and is well-lit. The parents have lived in the basement for three years already, and the landlord himself lives elsewhere in their own home which could accommodate the parents.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The *Act* s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant’s Application or uphold the landlord’s notice.

In this matter, the landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the landlord has met the burden to show they issued the Two-Month Notice in good faith. The tenant has not provided sufficient evidence to show otherwise.

I find there is sufficient evidence to show the landlord’s parents’ need for the rental unit. This includes physical needs, and I find these needs are legitimate.

The tenant described it as a situation of bad faith and submitted there are questionable motives where the landlord had the discussion with their parents on March 3, as provided in their own affidavits. This was after a contract was initially signed on January 1. The tenants submitted their own Notice of Civil Claim that was filed on February 25, 2021. I find that by the time the tenant here filed their civil claim, the sale of the unit was not proceeding at that point. This was prior to February 25, 2021. The discussion with the parents, as set out in their affidavit evidence, took place after this. I find the landlord’s promise to their parents was not conflicting with any other obligation of the landlord.

Further, the tenant did not provide testimony or other evidence to show other there was communication with the landlord that undermines the landlord’s stated intention on the need for the unit. There is no evidence to show the landlord made other indications to the tenant regarding their parents’ intention to move into the unit. Without such evidence of conflicting messages or other communication, there are no indications that show that the issuance of the Two-Month Notice was done in bad faith.

The tenant presented that the set-up of the rental unit is in fact not as accommodating to the parents’ needs as the affidavits present. This is with regard to bathrooms and daylight. I find they did not provide ample evidence to show this to be the case. These

submissions are speculative and inconclusive on how the unit is less amenable to the parents' needs.

For this reason, I uphold the Two-Month Notice issued on March 20, 2021 and find it was issued in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the landlord is entitled to an order of possession on the effective date.

Because the tenant is not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the tenant's Application, without leave to reapply.

For the reasons above, I grant an Order of Possession to the landlords effective 1:00 p.m. on June 1, 2021. The landlord must serve this Order of Possession on the tenant. Should the tenant 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 s. 9.1(1) of the *Act*.

Dated: May 14, 2021

Residential Tenancy Branch