



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, MNDCL-S, OPL, FFL, FFT

Introduction

The tenant seeks 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"). By way of cross-application the landlord seeks an order of possession based on the Notice, pursuant to sections 49 and 55 of the Act. In addition, the landlord seeks compensation against the tenant pursuant to section 67 of the Act. Both parties seek to recover the cost of the filing fee, pursuant to section 72 of the Act.

The tenant's wife (who represented the tenant), the landlord, and the landlord's wife (who did not testify) attended the hearing on May 17, 2021. No issues of service were raised by the parties (with the exception noted later in this decision), and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession based on the Notice?
3. Is the landlord entitled to compensation?
4. Is either party entitled to recover the cost of the filing fee?

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 began in August 2019. Monthly rent is \$1,900.00 and the tenant paid a \$950.00 security deposit. A copy of the written tenancy agreement was submitted into evidence by the landlord.

On January 29, 2021, the landlord served a copy of the Notice on the tenant, in-person. Copies of all four pages of the Notice were submitted into evidence. The Notice indicates, and this was confirmed by the landlord's testimony during the hearing, that the reason the Notice was given to end the tenancy is because the landlord's employer transferred them from Alberta to British Columbia.

The landlord, his wife, and their two little children need a place to live. The rental unit is their primary, and only, residence. A copy of the landlord's employer's transfer letter was submitted into evidence, though the tenant indicated that they had not received a copy of this. (The tenant did not dispute the landlord's assertion that he was transferred back to British Columbia for work purposes, however.)

The tenant argued that, when she entered the tenancy in mid-2019, they were under the impression that this would be a long-term tenancy of many years. Not, as the landlord's agent apparently led them to believe, a tenancy that would end a little over a year-and-a-half later. At this point, it is worth noting that the tenancy agreement states that it would be a one-year fixed-term tenancy ending July 2020 and continuing on a month-to-month basis thereafter.

The tenant testified, rather exasperatingly, that she has young children, and, that "this has messed up our whole year." Further, the tenant argued that this situation "is not fair" and that "I have kids for cryin' out loud!" One of those children is, according to the tenant, a special needs child. The tenant also submitted that given the current pandemic, people should not be having to move around, and, that there is a housing crisis on the Sunshine Coast.

Finally, the tenant explained that they want to leave the rental unit, but that they only filed to dispute the Notice on the very last day as a way to give them a bit of additional time to find a new home. It is, she added, a "ridiculous time to get into the housing market."

In his rebuttal, the landlord remarked that he had no idea, back in 2019, that he would have to eventually be transferred for work back to the Mainland. "None of us can see the future," he added.

In her rebuttal, the tenant reiterated that they are really looking for a new place as best they can, but that with three children in school and a housing crisis, this is proving to be difficult.

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.

Issue 1: Is tenant entitled to cancel Notice?

Issue 2: Is landlord entitled to order of possession?

In this dispute, the landlord issued the Notice pursuant to [section 49\(3\)](#) of the Act, which 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.

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 ground on which the Notice is based.

The landlord's testimony and submissions, supported by documentary evidence, persuades me to find that the landlord intends in good faith to occupy the rental unit. The tenant did not dispute, or raise any argument, in respect of the good faith aspect of the issuing of the Notice.

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 given. Thus, I dismiss the tenant's application seeking an order to cancel the Notice.

While I am sympathetic to the tenant's situation, and recognize that there is a housing crisis, the tenant's situation and a housing crisis are, with respect, not factors in determining whether a notice to end tenancy under section 49 of the Act is valid.

Having dismissed the tenant's application to dispute the Notice, pursuant to section 55(1) of the Act, I grant to the landlord an order of possession of the rental unit. This order of possession, a copy of which is issued to the landlord in conjunction with the decision, must be served by the landlord (or their agent) on the tenant. The order of possession will go into effect on May 31, 2021 at 1:00 PM.

Issue 3: Is landlord entitled to compensation?

The landlord seeks compensation for costs related to staying in alternative accommodations while they await the resolution of this dispute.

Section 67 of the Act sets out my authority to award compensation to one party against another. This section reads, in its entirety, as follows:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

What is lacking in the landlord's application, however, is any evidence that the tenant has not complied with the Act, the regulations, or the tenancy agreement.

The tenant, once they received the Notice, made an application for dispute resolution disputing the Notice. The tenant's decision to dispute the Notice is permitted under [section 49\(8\)](#) and [section 58](#) of the Act. Once an application for dispute resolution is made in accordance with the Act, the director then sets the matter down for a hearing (section 61 of the Act). This is what has occurred that lead from the tenant's lawful dispute of the Notice to a hearing which occurred on May 17, 2021.

All of which is to say: I do not find that the tenant has not complied with the Act, the regulations, or the tenancy agreement. Thus, in the absence of any breach under the Act, no claim for monetary damages or loss may be made against the tenant. This was briefly explained to the landlord during the hearing.

Given the above, I dismiss the landlord's claim for compensation, without leave to reapply.

Issue 4: Is either party entitled to recover cost of application filing fee?

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord partly succeeded in their application, I grant them \$50.00 in compensation to cover the cost of the filing fee. A monetary order for this amount is issued in conjunction with this decision.

Conclusion

The tenant's application is dismissed, without leave to reapply. The landlord's application, in part, is granted.

I grant the landlord an order of possession, which must be served on the tenant by the landlord, and which shall go into effect on May 31, 2021 at 1:00 PM. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$50.00, which must be served on the tenant. If necessary, this order may be filed and enforced in the Provincial Court of British Columbia.

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

Dated: May 17, 2021

Residential Tenancy Branch