



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, PSF, LAT, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated March 16, 2021 ("One Month Notice"); to cancel a Two Month Notice to End the Tenancy for Landlord's Use dated February 17, 2020, ("Two Month Notice"); for an order to provide services or facilities required by the tenancy agreement or law; for authorization for the Tenant to change the lock; to suspend or restrict the Landlord's right to enter; for an Order for the Landlord to Comply with the Act or tenancy agreement; and to recover the \$100.00 cost of his Application filing fee.

The Tenant 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 Tenant provided the Parties' email addresses in the Application and they 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.

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. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

In the hearing, the Landlord said that he cancelled the Two Month Notice, because he was not sure which notice to use, given the letter he received from the Regional District about the occupancy of this rental unit. He said, instead, he served the Tenant with a One Month Notice.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated several different matters of dispute on the application, the most urgent of which is the application to set aside the One Month Notice. I find that not all the claims on the Application are sufficiently related to this to be determined during this proceeding. As such, I will only consider the Tenant's request to set aside the One Month Notice and the recovery of the filing fee at this proceeding. The Tenant's other claims are dismissed, without leave to re-apply, given the outcome of this 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, the 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 complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2019, with a monthly rent of \$600.00, which is currently \$700.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit or pet damage deposit. The Parties noted that the residential property contains three buildings, one of which the Landlord occupies, one is the rental unit where the Tenant and his son reside, and the third building is empty, although it has been rented out in the past. The Landlord said that the rental unit is about three years old.

The Landlord said he served the Tenant with the One Month Notice, which was signed and dated March 16, 2021, and which has the rental unit address. It was served by attaching a copy to the rental unit door on February 17, 2021, and it has an effective vacancy date of May 1, 2021. The grounds for this eviction are that the rental unit must be vacated to comply with a government order.

The Landlord said in the hearing that he received a letter from the Regional District, which said the following:

REGISTERED OWNER:

[Landlord's name and address]

CIVIC ADDRESS: [rental unit address]

SUBJECT: DO NOT OCCUPY NOTICE

This letter will serve as notice that as of **December 04 2020** this department placed a **DO NOT OCCUPY NOTICE** on the construction at the above noted address, in accordance with Subsection 22.7 of the Building Bylaw No. 2200, 2010.

Subsection 22.7 reads as follows:

22.7 The owner of property on which a Do Not Occupy notice has been posted, and every person, must cease occupancy of the building or structure immediately and must refrain from further occupancy until all applicable provisions of the Building Code and this Bylaw have been substantially complied with and the Do Not Occupy notice has been rescinded in writing by a building official.

The **DO NOT OCCUPY NOTICE** is issued for the following reasons:

- Dwelling has been occupied prior to completion of Occupancy Inspection

You are required to cease occupancy and request Occupancy Inspection, providing the following:

- See attached Occupancy Inspection reports

Should the non-compliant construction be occupied prior to rectifying the above-noted violation we will have no alternative but to recommend further action to ensure compliance with the bylaws. This may result in the [Regional District] commencing with legal action.

The [Regional District] may issue Bylaw Offence Notice (fine) for non-compliance with the Building Bylaw No. 2200, 2010. The fine values are \$200.00 for 1st and 2nd offences, and increase to \$400.00 for 3rd and subsequent offences. Fines may be issued every 24 hours that the property remains non-compliance. To prevent this avoidable and expensive enforcement action from being levied, you are encouraged to voluntarily comply with the bylaw provisions. Time is of the essence.

To prevent further avoidable, unfortunate and expensive enforcement action from being taken against you, you are encouraged to comply with all requests made.

Yours truly,

[signature]

[name], Building/Plumbing Official

cc. Development Services – Property Files .

[Reproduced as written]

("Notice")

The Notice also included a list of the inspection statuses of the rental unit. This indicated that the following items were rejected by the Regional District:

Notes

Provide letters of assurance

Electrical permit.....required for solar installation

Smoke alarm.....smoke alarms to be hardwired &

interconnected
Carbon monoxide alarm.....to be hardwired and interconnected to each floor
Hand rail height
Hand rail support spacing.....not provided
Interior stair guard.....required to be < 100mm space
Post fire numbers
Occupancy prior to inspection
No occupancy prior to certification

The Notice also included a detailed list of ten construction items to be completed at the rental unit.

In the hearing, the Tenant's response to the Landlord's position is as follows:

There are a few things. Firstly, all occupants must cease to live in the dwelling. [The Landlords] are staying here, and I should have the right to stay here, as well. It's a basic human right to have a roof over my head. Why am I the one who is singled out here?

Secondly, I have spoken several times to the [Regional District], and they are not here to evict me, but to pressure [the Landlord] – they sent a do not occupy notice to pressure [the Landlord]. For instance, if the hot water tank blows up and me and my son are injured, they don't want to be liable. They haven't fined [the Landlord]; they aren't harassing me, and they don't want me to leave.

Thirdly, we're in a tight rental community. If I could find a place, I would leave in a heart beat. I need to keep a roof over my kid's head. There's no reason for me to be evicted on those grounds.

In answer to why the Regional District issued this Notice, the Landlord said:

It's a liability issue, like [the Tenant] said. The Regional District is liable for every building in the District, and if the building hasn't complied with permits prior to final inspection. These buildings haven't had their final inspection completed. It's a long story. I built without building permits, and they tolerated this, but progressively they have been enforcing the building permits. Since I don't have the permits on these three houses since January 2019, then I should not have been living in them.

But these buildings are under construction, even though they are constructions. There will be improvements that need to be done. But I can't do them with him living there. For instance, I need to wire the whole building, and install a new hot water tank, new baseboards heaters, partition walls in the bathroom, reinsulate the attic and the floors, and these are just the things that I know.

The Tenant said:

I have very little information officially about what needs to be done. Other than verbal stuff from [the Regional District], and from [the Landlord]. It would be nice to have an official list of what needs to be done. There's no issue with the structure, with the house. There are three houses; the second house is empty. This is an issue for a professional contractor. He could allow us to move to house number two.

I had an inspection with the Ministry of Children and Families – they inspected and have no issue with me and my son living here. This is the only official documentation that has been issued about the safety of this building.

The Landlord said:

He cannot move into the other building. There were other tenants, and I asked them to leave, and the idea is to have the houses empty, because I don't know how long this line of work will take . . . I wanted to have the buildings empty to take pressure off myself. I know the [Regional District] has mostly been stressed, because there are tenants. They are less stressed about having the Landlord live in the house, but they are much more stressed about liability of having tenants.

We're going to finish this house; I don't know how I can finish the three buildings. I don't want to have tenants living in the houses - it would cost me a very expensive fine. It's in the evidence – the second page – see fines on the Notice.

From what I understand it is implied, but they put that fine pressure to make me speed up the process. But with the budget I have and the kids, I can only go as fast as I can go. It could take me 10 years. I can renew these building permits as I like. I don't know how long it's going to take me to finish.

The Tenant said:

[The Landlord] mentioned budgeting; he just bought himself a \$3,000.00 electric

bike. He made \$15,000.00 selling puppies; he owns 13 acres in [the Town]. He has the equity and the finances to do it; he could hire a contractor if he doesn't have time to do it himself. We're talking about \$10,000.00 or \$15,000.00 at most. This is doable. I even proposed that I would accept a rent increase to offset the cost. As well, his eviction notices are not correct. I'm being evicted because [the Landlord] wants to renovate the house, because it's convenient for him to have me out of here. I don't think my son and I should be evicted for this reason

Analysis

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

The Tenant suggested that the Landlord is trying to evict him, because the Landlord wants to renovate the residential property. However, based on the evidence before me, I find that the Landlord failed to complete the construction of the buildings on the residential property before he rented them out. The Regional District's Notice to the Landlord refers to "...the construction at the above noted address..." [emphasis added], rather than repairing or renovating the buildings. This indicates to me that the Landlord failed to finish the construction of the rental unit, including the requirement to gain permits and inspection approvals from the Regional District. The Landlord said he does not know how long this will take, and that it could take as long as ten years.

The Landlord issued the One Month Notice based on section 47(1)(k) of the Act, which states:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

It is not often that a Notice to End Tenancy is given under this subsection, however, on occasion, an order is issued by a federal, British Columbia, or regional municipal government authority requiring that a residential property be vacated. If such an order is issued and the tenant fails to vacate the rental unit, the landlord can issue a One Month Notice to End Tenancy under this section.

If the Arbitrator determines that this is a valid order, then they uphold the One Month Notice to End Tenancy and issue an Order of Possession on the date required by the

One Month Notice to End Tenancy.

I appreciate the Tenant's belief that the Regional District does not want to evict him and his son in this difficult tenancy market; however, they *did* issue the Do Not Occupy Notice to the Landlord for the building(s) at the rental unit address. Further, the Tenant did not direct me to any documentary evidence from the District to support his position in this regard. As such, I find that the Landlord was obliged to issue the One Month Notice to the Tenant in order to comply with the Regional District's Notice.

Further, as the other buildings on the residential property are in the same condition as the rental unit, I find it is not a viable option for the Tenant and his son to move into one of the other buildings, while the rental unit was completed. I find that the Landlord was premature in allowing people to move into these buildings for rental payments.

I find that the Regional District's Notice is valid and enforceable and that the Landlord must comply with it. I also find that the One Month Notice is compliant with section 52 of the Act, as to form and content. I, therefore, confirm the One Month Notice and dismiss the Tenant's Application to cancel it. I find that the tenancy ended on May 1, 2021, and that the Tenant is overholding in the rental unit.

Given the above, and pursuant to section 55 of the Act, the Landlord is entitled to an Order of Possession. I grant the Landlord an **Order of Possession** for the rental unit **effective two days** after it is deemed served to the Tenant.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and enforceable.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant 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: May 27, 2021

Residential Tenancy Branch