



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On May 14, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") served May 1, 2021, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice issued May 1, 2021, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

The Tenant's application recorded that the tenancy began on August 1, 2016, that rent in the amount of \$2,000.00 is to be paid by the first day of each month, and that the Tenant had paid a security deposit of \$1,000.00 at the outset of this tenancy.

The Landlord testified that they personally served the Notice to the Tenant on May 1, 2021. The Notice indicated that the Tenant was required to vacate the rental unit as of July 1, 2021. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they, their spouse, and their children would be moving into the rental unit.

The Tenant testified that the two-month notice was too short and that they need more time.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony that the Landlord personally served the Notice to the Tenant on May 1, 2021. Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until May 15, 2021, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on May 14, 2021, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention

with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I have reviewed all of the documentary evidence and testimony before me, and I find there is insufficient evidence to prove to me, that the Landlord had issued the Notice with ulterior motives.

In the absence of sufficient evidence, I must accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice issued May 1, 2021.

Pursuant to section 55 of the Act, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit.

I have reviewed the Notice, and I find the Notice issued May 1, 2021, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession. However, I noted that the Notice recorded an effective date of July 1, 2021. Section 49 (2a) states the following regarding the notice period:

Landlord's notice: landlord's use of property

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,*
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy*

Section 49(2a) requires that two full rent periods are given for the two-month notice period. In this case, the Landlord served the Notice on May 1, 2021, the same day that the rent is due for this tenancy; therefore, I find that the earliest effective date that this notice could have, based on the date of service, is July 31, 2021.

In order for this Notice to be effective on July 1, 2021, the Landlord needed to serve the Notice to the Tenant no later than April 30, 2021, the day before the May 2021 rent payment was due for this tenancy. Section 53 of the Act states the following regarding incorrect dates on a Notice:

Incorrect effective dates automatically changed

- 53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.*
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [tenant's notice: landlord breach of material term], 46 [landlord's notice: non-payment of rent] or 50 [tenant may end tenancy early], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*
- (a) that complies with the required notice period, or*
 - (b) if the landlord gives a longer notice period, that complies with that longer notice period.*

Pursuant to section 53 of the Act, I find that the effective date of this Notice is changed July 31, 2021. Consequently, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on July 31, 2021. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, both parties were informed of their rights and responsibilities pursuant to section 51 of the Act, regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51 (2) of the Act, which states the following:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement 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.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The Tenant's Application to cancel the Notice, issued May 1, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on July 31, 2021. The Tenant must be served with this Order. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 18, 2021

Residential Tenancy Branch