



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the landlord was served with this application for dispute resolution via registered mail. I find that the landlord was served with this application for dispute resolution in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Evidence

Both parties agree that the tenants served their evidence on the landlord via registered mail in the same package as this application for dispute resolution. I find that the tenants served their evidence on the landlord in accordance with section 88 of the *Act*. Both parties agree that the landlord personally served the tenants with the landlord's evidence on July 8, 2021, four days before this hearing. The tenants testified that they did not object to the consideration of the landlord's late evidence. I find that the landlord's evidence was served on the tenants in accordance with section 88 of the *Act*.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. As the tenants agreed to allow the landlord's evidence to be considered and the tenants referred to the landlord's evidence during the hearing (indicating they have reviewed the landlord's evidence), I find that the tenants are not unreasonably prejudiced by the consideration of the landlord's late evidence. I accept the landlord's evidence for consideration.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenants' other claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Two Month Notice.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to

dismiss the tenant's application for an Order for the landlord to comply with the *Act*, with leave to reapply.

Preliminary Issue- Amendment

The tenants' application for dispute resolution mis-spelled the landlord's first name. Pursuant to section 64 of the *Act*, I amend the tenants' application to correctly spell the landlord's first name.

Issues to be Decided

1. Are the tenants entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The subject rental property is a house with an upper and lower suite. The tenants rent and occupy both suites- neither suite is subletted. This tenancy began on May 1, 2018 and is currently ongoing. Monthly rent in the amount of \$4,800.00 is payable on the first day of each month.

Both parties agree that the landlord posted the Two Month Notice on the table next to the tenants' door on March 24, 2021. The tenants testified that they received the Two Month Notice on March 24, 2021. The Two Month Notice is dated March 24, 2021 and states that the tenants must move out of the subject rental property on May 31, 2021 because the child of the landlord or landlord's spouse is moving in. The Two Month Notice is signed by the landlord.

Both parties agree that sometime in March 2021 the landlord verbally told the tenants that she was thinking of either selling the subject rental property or allowing her son to move in.

The landlord submitted that she is a real estate agent and that on March 19, 2021 she received a telephone call from another realtor in her office who informed her that the owner's of the condo her son rents is listing the property for sale and that her son would likely be served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The landlord entered into evidence a text message dated March 19, 2021 from the realtor in her office which states:

Hey, just a little heads up. [The landlord's son] likely won't know until tomorrow and I think it would be better for him to hear it from [the owner of the landlord's son's condo] than you (but that's my personal feeling)... I'm listing [the owner of the landlord's son's] condo at Artisan this coming week. Wanted to give you a heads up.

The landlord testified that after receiving the news that her son's rental was being sold and that her son would likely be evicted, the landlord decided to have her son move into the subject rental property.

The landlord testified that her son was served with a Two Month Notice to End Tenancy for Landlord's Use of Property. The landlord entered into evidence the Two Month Notice to End Tenancy for Landlord's Use of Property that her son was served with. That notice states that the landlord's son must vacate the subject rental property by August 1, 2021 because all the condition for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give the Two Month Notice to End Tenancy for Landlord's Use of Property because the purchaser or a close family member intends in good faith to occupy the rental unit. The landlord entered into evidence the buyer's notice to seller for vacant possession.

The landlord testified that her son will be moving into the subject rental property August 1, 2021 in compliance with the Two Month Notice to End Tenancy for Landlord's Use of Property that he was served with. The landlord testified that she no longer plans on selling the subject rental property as her son needs it to live in.

Tenant C.M. testified that he was caught off guard when the landlord told him that she was either going to sell the property or let her son move in. Tenant C.M. testified that he has no intention of leaving because there is no where else to go. Tenant C.M. testified that the two months' notice provided is not enough time to find suitable accommodation as the market in the subject rental city is out of control.

Tenant N.B. testified that the landlord does not have an honest intention of moving her son into the subject rental property and that the landlord has an ulterior motive. Tenant N.B. testified that the rents in the subject rental city are very high and that tenants are being driven out of their homes because landlords want to sell their properties. The tenant testified that she wants to remain in a month to month tenancy agreement with the landlord until a suitable home can be found.

The landlord testified that she is not acting in bad faith and that her son is moving in because he is being evicted.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenants on March 24, 2021, in accordance with section 88 of the *Act*. Upon review of the Two Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Policy Guideline 2A explains the 'good faith' requirement as requiring 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.

Based on the landlord's testimony, the March 19, 2021 text message, the Two Month Notice served on the landlord's son and the buyer's notice to seller for vacant possession, I find that the landlord served the tenants with the Two Month Notice because her son was being evicted for landlord's use of property and the landlord

wanted to provide a home for her son. I find that the landlord has proved that she acted in good faith in serving the Two Month Notice and honestly intends to have her son move in and does not have an ulterior motive for ending this tenancy.

I find that high rents and a lack of availability of adequate rental accommodations in the subject rental city does not impact the landlord's right to have a close family member move into the subject rental property.

Pursuant to my above findings, I dismiss the tenant's application to cancel the Two Month Notice and uphold the Two Month Notice.

Section 55 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.

I find that since the Two Month Notice complies with section 52 of the *Act* and the tenants' application to cancel the Two Month Notice was dismissed and the Two Month Notice was upheld, the landlord is entitled to a two-day Order of Possession.

As the tenants were not successful in this application for dispute resolution I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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: July 13, 2021

Residential Tenancy Branch