



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenants filed 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”) issued December 21, 2020, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord’s Spouse, Landlord’s Counsel (the “Landlord”), one of the Tenants and the Tenant’s Counsel (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the 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 that 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 dated December 21, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the Notice was personally served to the Tenants on December 21, 2021. The Notice indicated that the Tenants were required to vacate the rental unit as of February 28, 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 or the Landlord's Spouse

The Landlord testified that it is their intent to settle full time in Canada and live in the rental property. The Landlord testified that the property is large, holding two detached dwellings but that they will be using the rental unit on the property as their home office.

The Landlord testified that they have several renters living on the rental property in several self-contained units but that they need all of the tenancy so they and their business can reside and work on the property. The Landlord confirmed that Notices were given to the other renters as well but that those renters had not sought to cancel those Notices.

The Tenants testified that the property is large and that, therefore, there was plenty of room for the Landlords, their family, and their business without the need to end their tenancy. The Tenants testified that the property has two residences, and that the Landlord does not need all of this space, and that due to the property size that they should be permitted to stay.

The Tenants testified that they believe that the eviction Notice was issued in retaliation. For their refusal to work for the Landlord.

The Tenants also testified that as of the date of these proceedings, the other renters living on the property had not moved out and that they feel this shows that the Landlord was dishonest in their actions to evict them.

The Landlord Spouse testified that the owner passed due to illness on June 6, 2021. The Landlord's Spouse testified that they had been in the United States seeking specialized medical treatment, which had taken longer than they expected and that they had asked the other renters to stay on to take care of the property until they could return.

The Landlord's counsel testified that the Landlord's Spouse is the executor of the owner's estate, holding a life interest in the property.

The Landlord's Spouse testified that they are currently out of the country making funeral arrangements for the owner but that it is still their intent to return to Canada after the funeral service and reside and work on the property full time. The Landlord's Spouse confirmed that they would be residing on the rental property and running their home-based businesses from the property.

The Landlord agreed that a position on the Landlord's staff was offered to the Tenant, but that the Tenant had turned down the offer.

During these proceedings, the Landlord's Spouse agreed to extend the move-out date on the Notice to September 31, 2021.

Analysis

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

I accept the documentary evidence provided by the Tenants that the Landlord personally served the Notice to the Tenants on December 21, 2020. 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 February 6, 2021, to dispute the Notice. In this case, the Tenants filed to dispute the Notice on February 4, 2021, within the required timeline.

The Tenants' 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.

After reviewing the testimony and the documentary submissions, I find that on a balance of probabilities, that it is the intent of this Landlord to use the rental unit as additional living space and that this rental unit, in particular, will be used as office space for the Landlord's home-based business.

Overall, I find there is insufficient evidence to prove to me that the Landlord had issued the Notice with ulterior motives. Consequently, I dismiss the Tenant's application to cancel the Notice dated December 21, 2020.

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 December 21, 2020, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on September 30, 2021.

Also, 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.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the filing fee paid for this application.

Conclusion

The Tenants' Application to cancel the Notice, dated December 21, 2020, 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 September 30, 2021. The Tenants must be served with this Order. 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: August 18, 2021

Residential Tenancy Branch