



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, FFT, FFL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant and the landlords' agent 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 are not recording this dispute resolution hearing.

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

Preliminary Issue- Parties Named

Both applications for dispute resolution name only landlord M.B. as the landlord. Both parties agree that at the time this application for dispute resolution was filed, M.B. was the landlord and had served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") because:

- (a) landlord M.B. entered into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depended on had been satisfied, and
- (c) the purchaser asked the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - or
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The agent testified that the sale of the subject rental property completed on July 5, 2021 and that M.B. is no longer the owner of the subject rental property. The tenant agreed. The agent testified that he is seeking an amendment to add the new owners, L.G. and T.S., whom he represents, as landlords to this dispute. The agent testified that he also represents landlord M.B. The tenant testified that she does not object to adding L.G. and T.S. as landlords to this dispute because they are the new landlords and own the subject rental property.

Pursuant to section 64 of the *Act*, and on the agreement of the parties, I amend both applications to list L.G. and T.S. as landlords.

Preliminary Issue- Service

The tenant testified that she did not serve any of the landlords with her application for dispute resolution or her evidence. I find that the landlords were not served with the tenant's application for dispute resolution in accordance with section 89 of the *Act* and the landlords were not served with the tenant's evidence in accordance with section 88 of the *Act*.

The agent testified that the tenant was served with the landlords' application for dispute resolution via registered mail but could not recall on what date and did not have any documentary evidence to prove the mailing and did not have the tracking number. The tenant testified that she was not served with the landlords' application for dispute resolution.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the landlord has not proved that the tenant was served in accordance with section 89 of the *Act*.

Both parties agree that the tenant was served with the landlord's evidence package in person on August 26, 2021. The tenant testified that she had time to review all the documents in the landlord's evidence package.

The agent testified that he agreed to proceed with the tenant's application for dispute resolution even though the landlords were not served with the tenant's application for dispute resolution.

The tenant testified that she agreed to proceed with the landlords' application for dispute resolution even though she was not served with the landlords' application for dispute resolution.

Both parties entered into evidence a copy of the Two Month Notice. The tenant testified that she received the Two Month Notice on April 26, 2021 and again on August 26, 2021.

The landlord entered into evidence a Buyer's Notice to Seller for Vacant Possession. The tenant testified that she originally received this document on April 26, 2021 and again on August 26, 2021. Both parties consented to the above documents being considered in this cross application for dispute resolution.

I find that while the tenant did not serve her evidence on the landlords in accordance with section 88 and the landlords served their evidence on the tenant late, contrary to

section 3.14 of the Rules, I will admit the Two Month Notice and the Buyer's Notice to Seller for Vacant Possession into evidence because both parties consented to their consideration. I also note that neither party is prejudiced by their inclusion as both parties had copies of those documents in their possession months before this hearing.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Are the landlords entitled to an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55 of the *Act*?
4. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 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 tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,650.00 is payable on the first day of each month. A security deposit of \$825.00 was paid by the tenant to landlord M.B.

The agent testified that the Two Month Notice and Buyers Notice to Seller for Vacant Possession were posted on the tenant's door on April 26, 2021. The tenant testified that she received both documents on April 26, 2021. The tenant filed to dispute the Two Month Notice on April 26, 2021.

Landlord M.B. filed an application for dispute resolution for an Order of Possession pursuant to the Two Month Notice on May 20, 2021 and paid the \$100.00 filing fee.

The Two Month Notice states that the reason for this Two Month's Notice to End Tenancy is that all the conditions for the sale of the rental unit have been satisfied and

the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The Two Month Notices states that the tenant must vacate the subject rental property by June 30, 2021. The agent testified that landlords L.G. and T.S. still intend on moving in as soon as the tenant moves out.

The Buyers Notice to Seller for Vacant Possession states:

WHEREAS:

- A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated March 25, 2021 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).
- D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

NOW THEREFORE in accordance with Section 49 of the Residential Tenancy Act, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the Residential Tenancy Act terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on July 1, 2021.

The Buyers Notice to Seller for Vacant Possession is signed by landlords L.G. and T.S., who were, at that time, the buyers.

The tenant testified that she filed to cancel the Two Month Notice because the summer is her busiest time and she does not wish to move out before October 2021. The tenant testified that she wanted to purchase the subject rental property from landlord M.B. but landlord M.B. sold it to landlords L.G. and T.S. before she was able to put in an offer.

Analysis

Based on the testimony of both parties I find that the tenant was served with the Two Month Notice on April 26, 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(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Based on the testimony of both parties and the Buyers Notice to Seller for Vacant Possession, I find that the agent has proved, on a balance of probabilities, that:

- a) landlord M.B. entered into an agreement with landlords L.G. and T.Y. in good faith to sell the rental unit, and that the sale completed on July 5, 2021,
- (b) at the time the Two Month Notice was served, all the conditions on which the sale depended on were satisfied, and
- (c) the purchasers (landlords L.G. and T.Y.) asked landlord M.B., in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Pursuant to my above findings, I find that Two Month Notice is valid and landlords L.G. and T.Y. are entitled to a two-day Order of Possession in accordance with section 55(2) of the *Act*. I find that a desire to move out later than the effective date on the Two Month Notice is not a valid reason to dispute the Two Month Notice, nor is the failed intention

to purchase the property. The tenant's application to cancel the Two Month Notice is therefore dismissed without leave to reapply.

As the tenant's application to cancel the Two Month Notice was not successful, I find that the tenant is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*. As the landlords' application for an Order of Possession was successful, I find that landlord M.B. who paid the \$100.00 filing fee, is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to landlords L.G. and T.Y. effective **two days after service on the tenant**. 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.

I issue a Monetary Order to the landlord M.B. in the amount of \$100.00.

Landlord M.B. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 31, 2021

Residential Tenancy Branch