



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OLC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 4, 2021 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, the landlord, counsel for the landlord, MS (counsel) and an articling student for counsel, OM (articling student) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me.

As neither party raised any concerns regarding the service of the application or documentary evidence and that both parties confirmed that they had the opportunity to review evidence served upon them, I find the parties were sufficiently served in accordance with the Act.

The tenant and landlord were affirmed. Counsel was not affirmed as counsel has already sworn an oath. I find I did not need to affirm the articling student as they were solely an observer.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the

hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Also, pursuant to section 64(3)(c) of the Act, I have included the alias name of the landlord (AKA, TI) in the style of cause and an applicable order(s).

Pursuant to Rule 2.3 of the RTB Rules, I exercise my discretion to sever the tenants' request for an order directing the landlord to comply with the Act, regulation or tenancy agreement, as the details of dispute for that portion of the tenants' application state as follows:

The Landlord stated that his father would be moving in as soon as we're out, and if he does not we would have to be given some compensation.

[Reproduced as written]

I find that this portion is premature and is dismissed with leave to reapply as a result.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, are the tenants entitled to the recover of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one-year fixed-term tenancy began on October 1, 2006 and reverted to a month to month tenancy after one year. Monthly rent in the amount of \$650.00 originally was due on the first day of each month and was increased during the tenancy.

The tenant confirmed that they were served on April 6, 2021 with the 2 Month Notice dated April 4, 2021. The effective vacancy date on the 2 Month Notice is listed July 1, 2021, which has passed. The tenants disputed the 2 Month Notice on April 17, 2021,

which was within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason as “The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse: The father or mother of the landlord or landlord’s spouse.”

The tenant indicated on their application the following:

We are a family of 5 living in this rental. We have not been given a sufficient time frame to move into a new place. As of recently we have taken in the elderly Grandfather which requires time and care, so looking for a place that can also accomodate his needs is more difficult. The influx of migrant workers means less rentable housing available in the area until late fall. Furthermore, having been renting this house four 14 years we're dissappointed in how little to no home maintenance done.

[Reproduced as written]

Counsel referred to the signed Affidavit from the landlord dated August 11, 2021 (Affidavit), which the tenant confirmed they had read prior to the hearing. Counsel highlighted portions of the Affidavit including 3, which indicates that the landlord’s father, U (U), and stepmother, D (D), advised that they would be selling their home in Mara, BC. Counsel also referred to 4, which indicates that U is 88 years of age, while D is 91 years of age. In addition, counsel referred to 5, which states that for several years, U and D have been struggling with the upkeep and maintenance of their house because of limitations imposed on them by their age.

Counsel also mentioned portions of the Affidavit that related to U and D’s consideration of residing at the rental unit after other locations were not deemed suitable for their needs. Counsel also submits that U and D sold their home and that the completion date was August 14, 2021 so they have already vacated their home and need a place as soon as possible. Counsel also stated that the landlord appreciates that the tenants have been long-term tenants; however, due to the needs of U and D, there are no other alternatives that meet their needs, so they plan to reside at the rental unit.

The tenant responded by stating that the landlord has a special father and a (step)mother with mobility issues but questioned the timing of the 2 Month Notice being after a request for repairs by the tenants. Counsel confirmed that the 2 Month Notice had nothing to do with any request for repairs.

The tenant also stated that there is very little to choose from and that the soonest they could find a new rental unit was December 1, 2021. The tenant stated that they now take care of his father, who is 82.

The landlord and counsel stated that they would be willing to allow the tenants to stay in the rental unit until September 7, 2021 with September 1-7, 2021 rent being waived. Counsel stated that the landlord is seeking an order of possession for September 7, 2021 at 5:00 p.m. Pacific Standard Time (PST).

Both parties were provided the opportunity to ask questions at the end of the hearing. The hearing lasted 40 minutes.

Analysis

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

2 Month Notice to End Tenancy for Landlord's Use of Property – I find the tenant disputed the 2 Month Notice within the 15-day timeline provided under section 49(8)(a) of the Act and as noted above. The reason indicated on the 2 Month Notice is "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse - The father or mother of the landlord or landlord's spouse."

While the tenant raised the issue of bad faith by alleging that the 2 Month Notice was issued after a request for repairs was made, I find that the tenant failed to provide any evidence of such requests in writing, and I find that the landlord via counsel denied that any request for repairs related to issuance of the 2 Month Notice. Furthermore, I note the tenant did not allege bad faith in their application and were instead, stated that they were not given sufficient time to move into a new place. I disagree with the tenant that they were not given sufficient time as section 49 of the Act provides the ability for a landlord to end a tenancy for landlord's use of property by giving 2 full month's notice and compensating the tenant under section 51(1) of the Act with the equivalent of one month's rent. In addition, I find the Act does not provide an extension to a 2 Month Notice effective vacancy date for hardship reasons.

In the matter before me, the tenant did not dispute the special needs or the ages of U and D, the father and stepmother of the landlord. In addition, I afford considerable weight to the fact that U and D sold their home and vacated as of August 14, 2021, which was the completion date of the sale of the previous home of U and D. Therefore, I

find the landlord has provided sufficient evidence that the 2 Month Notice was issued in good faith and for the reason stated on the 2 Month Notice.

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid.

Therefore, **I dismiss** the tenants' application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice. I also accept that landlord agreed to delay the order of possession until September 7, 2021 at 5:00 p.m. PST.

Section 55(1) of the Act states:

Order of possession for the landlord

55(1) 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.**

[Emphasis added]

Given the above and considering that I find the 2 Month Notice complies with section 52 of the Act as it was signed and dated and included all the required information under the Act, I find that the landlord is entitled to an order of possession effective **September 7, 2021 at 5:00 p.m. PST**, which is the date the landlord agreed to during the hearing. I find the tenancy ended on July 1, 2021, which was effective vacancy date listed on the 2 Month Notice. I also find that rent/overholding for September 1-7, 2021 was waived by the landlord during the hearing.

As the tenants' application was not successful, **I do not grant** the tenants the recovery of the filing fee.

Conclusion

The tenants' application to cancel the 2 Month Notice is dismissed. I uphold the 2 Month Notice issued by the landlord.

The landlord has been granted an order of possession effective September 7, 2021 at 5:00 p.m. PST. The tenancy ended on July 1, 2021. The order of possession must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenants are reminded that they could be held liable for all costs to enforce the order of possession if they fail to vacate by September 7, 2021 by 5:00 p.m. PST.

The landlord agreed that the tenants will not be required to pay rent/overholding for September 1-7, 2021.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenants.

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: August 24, 2021

Residential Tenancy Branch