



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On April 23, 2021, the Tenants 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”) issued April 14, 2021, and to recover the filing fee for their application. The matter was set for a conference call.

The four parties for the Landlord (the “Landlords”) and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. 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 requires 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 on April 14, 2021, be cancelled?
- If not, is the Landlords 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 served in person to the Tenants on April 14, 2021. The Notice indicated that the Tenants were required to vacate the rental unit as of June 30, 2021. Both parties submitted a copy of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or the Landlord's spouse intends in good faith to occupy the rental unit.

The property owner J.F. (the "Owner"), testified that they entered into a rent-to-own contract with P.G. (the "Rent to Own Landlord") on November 13, 2020. The Owner testified that the rent-to-own contract has a start date of January 1, 2021 and ends on December 30, 2026. The Owner and Rent to Own Landlord submitted a copy of the contract into documentary evidence.

The Rent to Own Landlord testified that they spoke to the Tenants on December 15, 2020, introducing themselves as the new owners and verbally agreeing to allow the tenancy to continue, with the Tenant's paying the rent to the Rent to Own Landlord, for a few months.

The Tenants testified that they have been paying their rent to the Rent to Own Landlords since January 1, 2021.

The Rent to Own Landlord testified that they and their spouse now wish to, in good faith, to reside on the rental property.

The Tenant testified that they agree that the Rent to Own Landlord wishes to reside on the rental property, but that they disputed the Notice as they do not believe that the Rent to Own Landlord has the right to end their tenancy for their own use of the property as they are not the legal owners of the rental property. The Tenants submitted a copy of the title search for the rental property into documentary evidence.

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 parties that the Rent to Own Landlord served the Notice in person to the Tenants on April 14, 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 Tenants had until April 29, 2021, to dispute the Notice. In this case, the Tenants filed to dispute the Notice on April 23, 2021, within the required timeline.

The Tenant's application called into question whether a Rent to Own Landlord has the legal right to end their tenancy. The *Residential Tenancy Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Additionally, section 49 of the Act offers further clarification, stating the following:

Landlord's notice: landlord's use of property

49 (1) In this section:

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

I have reviewed rent to own contract submitted by the Landlords, and I find that the Rent to Own Landlord holds a reversionary interest in the rental property between January 1, 2021, to December 20, 2026, which exceeds 3 years. Therefore, pursuant to section 49 of the *Act*, I find that the Rent to Own Landlord does meet the definition of a landlord under the *Act* and that they have the right to end this tenancy for their own use of the property.

As the Rent to Own Landlord's intent to move into the rental property was not in dispute before me in these proceedings, I accept it on good faith that the Landlords are going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenants' application to cancel the Notice issued April 14, 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 April 14, 2021, is valid and enforceable. Therefore, I find that the Landlords are entitled to an order of possession, effective not later than two days after service on the Tenants.

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 Tenant's Application to cancel the Notice, issued on April 14, 2021, and recover their filing fee is dismissed.

I grant an **Order of Possession** to the Landlords effective **two days** after service on the Tenants. 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 11, 2021

Residential Tenancy Branch