



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on August 16, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).
- Cancel the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day).

Both parties were present at the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenants' amendment sometime mid-June and did not take issue with the service of that package.

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(s) to be Decided

- Are the Tenants entitled to have the landlord's 2 Month Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to have the landlord's 10 Day Notice cancelled?

- If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the 2 Month Notice on March 31, 2021. The effective date of this Notice is June 1, 2021. The Landlord issued the Notice for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

-the child of the Landlord or the Landlord's spouse

In the hearing, the Landlord stated that he has owned this house for 17 years, and has been working hard to pay it off so that his son can move into the property with his wife, so that they can start a family. The Landlord explained that his son got married approximately 10 months ago, and he wants to move into this house, as he is currently renting a house. The Landlord stated that his son is putting his life on hold as he waits to be able to move into this rental house, but the Tenants refuse to move out.

The Tenants were given a chance to respond to what the Landlord testified to regarding the 2 Month Notice, but they did not speak to anything relevant to the 2 Month Notice, and only stated the Landlord is lying about how much rent is owed.

The Tenants stated that they received the 10 Day Notice on May 2, 2021. A copy of this notice was provided into evidence, and the Landlord indicated that \$4,700.00 was due as of May 1, 2021. The Landlord clarified that this amount is only \$4,400.00, which is two months worth of rent, for April and May 2021.

The Landlord explained that since last year, when the Tenant lost his job due to COVID, he has been paying rent late, since that is when he receives his government support cheques. The Landlord stated that this late rent payment was never acceptable, but given the pandemic, the Landlord didn't feel he had any choice but to accept rent late, otherwise he may not get any at all. The parties agree that during this difficult time, the Tenants have been paying monthly rent toward the end of each month, rather than the first of the month.

Both parties agree that monthly rent is \$2,200.00 and is due on the first of the month, which is how it was paid, prior to the pandemic period. No written tenancy agreement

was provided into evidence. However, the parties acknowledge that the tenancy has been ongoing since approximately 2006.

The Tenants acknowledge that they did not pay April 2021, rent on time. They stated that, after receiving the 10 Day Notice on May 2, 2021, they paid \$2,200.00 (for outstanding April 2021 rent) on May 10, 2021. The Tenants stated that following this, they paid another \$2,200.00 on May 29, 2021, for the month of May 2021. The Tenants stated that they paid June and July rent, in full, and currently only owe \$2,200.00 for the month of August 2021. The Landlord agreed that these amounts were correct.

Analysis

Based on the evidence and testimony before me, I make the following findings:

I turn to the 2 Month Notice first, as this is the Notice that was issued first.

After an application to cancel a 2 Month Notice has been filed, the burden of proof rests with the Landlord to demonstrate that they, in good faith, intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

B. GOOD FAITH

When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

[...]

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I have considered the testimony and the evidence on this matter, in totality. The Landlord explained that he has owned this house for many years, and has worked over decades to pay this house off so that his son can move in. The Landlord explained that

his son was married approximately 10 month ago, and his son and his wife are wanting to move out of their current rental unit, into this house so that they can have more space, and start a life together. The Landlord explained that everything is on hold because the Tenants refuse to move out. The Tenants did not present any relevant or compelling response to the Landlord's stated plans and intentions with the house.

Although there has been little documentary evidence provided by either party, I find the Landlord's stated plans are reasonable and compelling. I find the Landlord's testimony on this matter is sufficient to establish his good faith intentions regarding the 2 Month Notice. The Tenant did not present any compelling reasons why the Landlord's plans should be called into question. It appears the Tenants were just looking for more time to move out.

The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession, effective 2 days after it is served.

Given my findings thus far, it is not necessary to consider the merits of the 10 Day Notice. As such, I decline to make any orders regarding what, if any, rent is still owed. Should any rent remain outstanding at the end of the tenancy, the Landlord is granted leave to reapply for unpaid rent.

I decline to award the recovery of the filing fee, as the Tenant was not successful in this hearing.

Conclusion

The Tenants' application to cancel the 2 Month Notice to End Tenancy dated March 31, 2021, is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 16, 2021

Residential Tenancy Branch