



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated May 6, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the tenancy began on March 1, 2018 with a different landlord than the one before me. The Parties agreed that the current Landlord purchased the residential property from the prior owners. The Parties agreed that pursuant to the tenancy agreement for this rental unit, the Tenant is required to pay the Landlord a monthly rent of \$1,306.00, due on the first day of each month. The Parties agreed that the Tenant paid the previous landlord a security deposit of \$637.50 and no pet damage deposit. The current Landlord said that he obtained the Tenant's security deposit from the previous owner, and that he still holds it for the tenancy.

The Landlord/Purchaser said that he asked the previous owner in writing to give the Two Month Notice to the Tenant, because the purchaser intends in good faith to occupy the rental unit.

The Two Month Notice was signed and dated May 6, 2021, it has the rental unit address, it was served by being posted to the rental unit door on May 6, 2021, with an effective vacancy date of July 31, 2021. It was served on the ground that the purchaser intends in good faith to occupy the rental unit.

The Tenant said:

When I first made application, I believed he was not sincerely intending to move into the house. But I believe he's telling the truth. He purchased that home with the intent to use it as a rental down the road; this was my concern at the time that I didn't have all the evidence that I have today.

Based on the evidence I see today, I like [the Landlord]; he's a nice guy. When I see his evidence on his house purchase, knowing what I know about banks and mortgages, he couldn't tell the bank he was using it as an investment property, because that would be 50% down. But if you live there, you can get normal mortgage rates. Live there for a short period of time and then rent it out. If he'd said he was going to use it as a rental home, the bank had different sorts of rules regarding that.

I believe he's going to live in it for a short period of time and then buy another home and rent out this home. The pattern is the same. It's such a high-value market, he can make a profit from that. I'm only paying \$1,306.00 for a three-bedroom home. Based on his own evidence, people are desperate. He can live there for the six months and buy another home, because now he has equity in two homes. I don't mean to digress, but the banks know that he can't live in two or three homes.

I asked the Tenant why he does not move out, if he believes the new Landlord has a good faith interest in living in this home. He said:

There is no place to move to. Once the house came up for sale in January, I have viewed a few to rent, because the purchasing market is going to pop and crash; it's safe to rent in the interim.

I haven't complied [with the eviction notice], because I didn't believe the intention of the Landlord – that he didn't have good faith in moving in. I believed he was going to turn around and re-rent them at market, which he could do to make money. I'm paying almost half of what the market could produce. It makes sense to rent out a place to make money.

The Tenant said that the Landlord has not yet given him the one month of free rent that is granted a tenant by the Act in an eviction for the landlord's use. The Parties can work that out between them or apply for dispute resolution to have this compensation resolved by the RTB. The Tenant continued:

I believed at the time of my initial Application that [the Landlord] would stay in the house for the period of time; however, [he] has moved into the basement suite of the house, so he has moved. So, I guess, my application sort of would have evolved a bit since initially, since he lives in the house now. I'm not sure of the legal ramifications, and I believe he had intended this the whole time.

The Landlord said:

The downstairs is not a legal suite; it's only 600 square feet, and from coming from a 1400 square foot upper unit, it's quite tight.

The Landlord indicated that he will move into the rental unit, taking over the whole residential property when the Tenant leaves.

Analysis

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

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I

find that both Parties' testimony in the hearing indicates that the Landlord already lives in a lower suite in the residential property, and that he intends to take over the entire property, including the rental unit, for his own use. Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 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. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51(1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord 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

Supreme Court of British Columbia and enforced as an Order of that Court.

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: September 22, 2021

Residential Tenancy Branch