



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued by the landlord;
- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The tenant, the landlord, and the landlord's witness attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing 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, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Should the Two Month Notice to end tenancy issued by the landlord be upheld or cancelled?
2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The testimony from the hearing showed a tenancy start date of February 2016, monthly rent beginning at \$1,500, a current monthly rent of \$1,550 and a security deposit of \$750 being paid by the tenant to the landlord.

The evidence shows that the landlord issued the tenant the Notice on May 31, 2021, by personal service. The tenant confirmed receiving the Notice on that date, which was dated May 25, 2021, and listed an effective move-out date of July 31, 2021. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord's close family member, or here, their child.

The tenant's application was filed within the 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord submitted that he issued the tenant the Notice because their daughter intended on moving into the rental unit. The landlord said that their daughter broke up with their common law partner and "desperately" needs a place to live. As the tenant failed to vacate the rental unit by the effective date of the Notice, the landlord's daughter had to extend their tenancy at their current rental unit, according to the landlord.

The landlord submitted that the extension of their daughter's tenancy caused "considerable trauma to her mental health". The landlord submitted that the extension cost them and their daughter thousands of dollars in extra rent. The landlord submitted that their parents live in the other duplex and their daughter would have the family support during this time. Additionally, according to the landlord, their daughter's car broke down and will cost \$2,500 to fix, whereas the rental unit here is a 5-minute walk to work. Currently, their daughter is paying for public transportation and taxis to get to work.

Landlord's witness –

The witness is the daughter of the landlord, who testified that they broke up with their partner and will move into the rental unit as soon as possible.

Tenant's response –

The tenant submitted that they have looked for a new place to live, but has been unable to find anywhere suitable for an affordable price.

The tenant submitted they needed more time to find another place as they were dealing with marital issues, with two children and their mother living with them. The tenant submitted that they have their name in with multiple property management companies and have been unable to find another place.

The tenant submitted they are questioning the landlord's good faith in issuing the Notice because they have lived in the rental unit for over five years and in text messages, the landlord indicated they did not want the tenant to move.

The tenant also submitted that when the landlord handed them the Notice, the landlord indicated that their daughter and common-law partner would move into the rental unit, not just the daughter.

The tenant submitted that the landlord's daughter may move into the rental unit, but does not know for how long.

As to their request for monetary compensation, the tenant did not specify an amount. However, the tenant wrote "This is questionable, I did have to purchase a washer, his

broke when I first moved in, he said he couldn't afford one so I had to go in debt and buy one and have it installed".

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Residential Tenancy Policy Guideline 2 provides 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 their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy issued dated May 25, 2021, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89(1) of the Act.

After hearing from the landlord, I find that their daughter genuinely intends to move into the rental unit, in order to move next door to their grandparents, to be able to walk to work, and save on rent.

I cannot find that the landlord acted dishonestly or had an ulterior motive in issuing the Notice seeking the end of the tenancy. The tenant agreed that the landlord's daughter will move into the rental unit, but may not stay that long.

The tenant's main assertion in contesting the Notice was they needed more time to move out. While that may be true, the tenant originally applied seeking an extension to October 1st or 15th 2021, which considering that the hearing on the tenant's application was October 1, 2021, accommodated the tenant's request. I cannot consider the

tenant's personal circumstances and difficulty in finding suitable accommodation when considering the parties' rights and obligations under the Act.

I therefore find that, upon a balance of probabilities, the landlord has met their burden of proving that their daughter honestly intends to move into the rental unit and that the Notice was issued in good faith.

I therefore find the Notice is valid and enforceable.

As such, I dismiss the tenant's application seeking cancellation of the Notice and recovery of the filing fee, without leave to reapply.

I **order** the tenancy ended on the effective date of the Notice, or July 31, 2021.

Under Section 55(1)(b) of the Act, I grant the landlord an order of possession of the rental unit, effective **two (2) days after service on the tenant**.

The order of possession of the rental unit is included with the landlord's Decision and must be served on the tenant to be enforceable. Should the tenant fail to vacate the rental unit within two (2) days after service, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenants.

The landlord and the tenant are hereby informed of the provisions of section 51(1) of the Act, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the Act is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord and the tenant are hereby informed of Section 51(2) of Act, which provides that if the landlord has not taken steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an additional equivalent of twelve months' rent.

As to the tenant's claim for monetary compensation, the tenant has not indicated an amount of the claim nor have they submitted any evidence to support that there was a monetary loss.

As the claim was unclear, I dismiss the tenant's claim, without leave to reapply, pursuant to section 62(4)(b) of the Act.

Conclusion

The tenant's application seeking cancellation of the Notice and to recover the cost of the filing fee is dismissed as I have found the Notice to be valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective two (2) days after service upon the tenant.

The tenant's claim for an unspecified amount of monetary compensation is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 4, 2021

Residential Tenancy Branch