



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to Section 49 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent, FLC, the Tenant, Advocate, and witness attended the hearing at the appointed date and time and provided affirmed testimony. Each party was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant served the Landlord with the Notice of Dispute Resolution Proceeding package and all evidence by Canada Post registered mail on July 17, 2021, referring me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. I find that the landlord was served with the documents for this hearing five days after mailing them, on July 22, 2021, in accordance with sections 89(1)(c) and 90(a) of the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
3. Is the Tenant entitled to recovery of the application filing fee?
4. If the Tenant fails in their application, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the Act?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on November 1, 2011. Monthly rent is \$1,415.00 payable on the first day of each month. A security deposit of \$600.00, and a pet damage deposit of \$600.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord personally served the Two Month Notice on the Tenant on June 16, 2021. The effective date of the Two Month Notice was August 31, 2021. The stated purpose given for the Two Month Notice was that a child of the landlord or landlord's spouse will occupy the rental unit.

FLC is the Landlord's son and he testified that he intends and plans on moving into the rental unit. FLC testified that his dealings with the City and attempts at rectifying breaches of city bylaws on the property are indications of his responses to begin the process of his move onto the property into the rental unit.

The Tenant does not believe that the Landlord is acting in good faith and disbelieves that FLC will be moving into the rental unit. The Tenant testified that the son owns the house next door, and he has a business over a one-hour drive away. The Tenant's witness testified that FLC currently has a tenant in his rental home next door.

The witness provided testimony of previous interactions with the Landlord and FLC. She described these interactions as impolite or unfriendly. The witness stated that once the

Landlord told them if the Tenant was not so stubborn, she could get anything she wanted.

The Landlord also personally served a One Month Notice to End Tenancy For Cause or End of Employment on the Tenant on July 22, 2021 (the "One Month Notice"). The Tenant provided this One Month Notice in her evidentiary package. The Tenant testified that she disputed the One Month Notice as well, and that she was told by an Information Officer (the "IO") that both of these files would be joined together. I verified our system and did not see a dispute resolution application for the One Month Notice, but I told the Tenant I would make inquiries with the IO team on this alleged missing dispute resolution application.

After the hearing ended, the IO team verified that there was no dispute resolution application filed for the One Month Notice. An IO contacted the Tenant to discuss this issue, and the Tenant verified they did not make a separate application.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

49 (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

(i) *not earlier than 2 months after the date the tenant receives the notice,*

...

- (3) *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.*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...*

- (8) *A tenant may dispute*

- (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

The Tenant made a claim that she did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties understand issues that are likely to be relevant in this regard.

B. Good Faith

In *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. 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 dishonest motive.

FLC was firm on his assertion that he intends to move into the rental unit. He stated that he is beginning the process of rectifying breaches of city bylaws on the rental property. Neither the Tenant's disbelief about this assertion nor the witness' description of the Landlord's and FLC's characters as being unpleasant, assist me in finding on a balance of probabilities that the Landlord has an ulterior purpose. I find that the Landlord meets the good faith requirement that his son will be moving into the rental property, and consequently dismiss the Tenant's application to cancel the Two Month Notice without leave to re-apply.

There was a second notice to end tenancy included in the Tenant's evidence package for which the parties agreed I could hear. Having made my decision to uphold the Two Month Notice above, I need not adjudicate on this second claim.

As the Tenant was not successful in her application, I must now consider if the Landlord is entitled to an Order of Possession.

Section 55(1) of the Act reads as follows:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I find that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act and I uphold the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

As I uphold the Landlord's Two Month Notice, I caution the Landlord to regard Section 51 of the Act regarding: **Tenant's compensation**, which comes into play when the Landlord does not fulfil the stated purpose in their notice.

As this tenancy has ended, I decline to make any orders on the Landlord to comply with the Act, regulations and tenancy agreement. Finally, as the Tenant was unsuccessful in her claim, she is not entitled to recovery of the filing fee.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: November 03, 2021

Residential Tenancy Branch