



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants on September 11, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on January 25, 2022, and was attended by the Tenant L.A. (the Tenant), who provided affirmed testimony. Although the line remained open for 35 minutes, no one called in on behalf of either the Previous Landlord D.P. (the Previous Landlord) or the Purchaser C.H. (the Purchaser). The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over myself and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The *Act* and the Rules of Procedure state that the respondent(s) must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). As neither the Previous Landlord nor the Purchaser attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified in the hearing that the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, along with the documentary evidence before me from the Tenants, were sent to the Previous Landlord and the Purchaser by registered mail on September 23, 2021, and provided me with the registered mail tracking numbers, which are recorded on the cover page of this decision. The Tenant provided a copy of the registered mail receipt and a photograph of the registered mail stickers. Canada Post tracking shows that both registered mail packages were sent on September 23, 2021, that notice cards were left on September 24, 2021, and September 29, 2021, and that the registered mail packages were ultimately returned to sender as unclaimed on October 13, 2021.

The Tenant stated that she had used the Previous Landlords address from the Two Month Notice, which was the main house on the property upon which the rental unit was located, and where the Previous Landlord was residing at the time. They stated that they used the address given for the Purchaser in the tenant occupied property – buyers notice to seller for vacant possession, a copy of which was submitted by the Tenants for my review and consideration. When they learned that both packages were being returned, the Tenant stated that they personally served the Previous Landlord at their new residence on approximately October 21, 2021, as they had now moved. The Tenant stated that they re-sent the package for the Purchaser by regular mail and registered mail on October 4, 2021, using a different address. The Address used was noted as a possible address for the Purchaser by Canada Post and is shown on page two of the Two Month Notice. The Tenant stated that the only difference between the address used for the first package and the second package is the first number in the street address, a 5 for the second package versus a 9 for the first package. As a result, the Tenant stated that they did not initially notice the difference in the Purchaser's address between the tenant occupied property – buyers notice to seller for vacant possession form, and page two of the Two Month Notice.

The Tenant provided me with the registered mail tracking number for the second package sent to the Purchaser on October 4, 2021, which I have recorded on the cover page of this decision. Canada Post tracking information shows that the registered mail was sent on October 4, 2021, that notice cards were left on October 5, 2021, and

October 12, 2021, before being returned to sender as unclaimed on October 25, 2021. Finally, the Tenant stated that they dropped a copy off at the door of the Purchaser's home address, which I have recorded on the cover page of this decision, on approximately October 22, 2021. This address is on the same street upon which the rental unit is located, and the Tenant stated that it is the home of the Purchaser's father and that the Tenant saw the Purchaser's vehicle there on the property.

I find that the addresses used for both the Previous Landlord and the Purchaser for the first registered mail packages sent on September 23, 2021, are valid addresses for service in compliance with sections 88(c) and 89(1)(c) of the *Act*. Although the addresses for the Purchaser differs slightly between the Two Month Notice and the tenant occupied property – buyers notice to seller for vacant possession form, I find that it was reasonable for the Tenant to rely on the address given by the Purchaser to the Previous Landlord in the tenant occupied property – buyers notice to seller for vacant possession form, as a valid address for the Purchaser. Based on the above and as there is no evidence before me to the contrary, I find that the Previous Landlord and the Purchaser were deemed served pursuant to section 90(a) of the *Act* on September 28, 2021, five days after the registered mail packages were sent. In any event, I am also satisfied that both the Previous Landlord and the Purchaser were subsequently served or deemed served on additional dates and by way of additional service methods, as set out below.

Based on the Tenant's affirmed and undisputed testimony, I find that the Previous Landlord was subsequently personally served on approximately October 21, 2021. I also find that that the Purchaser was subsequently deemed served by regular mail and registered mail at the address listed in the Two Month Notice, on October 9, 2021, five days after these packages were re-sent by regular and registered mail on October 4, 2021. Finally, I am satisfied that the Purchaser was also deemed served on approximately October 25, 2021, pursuant to sections 88(g) and 90(c) of the *Act*, three days after the package was left at the door of the Purchaser's father's residence, where the Tenant states that the Purchaser resided at that time.

Residential Tenancy Branch (Branch) records indicate that the Notice of Dispute Resolution Proceeding Package was sent to the Tenants by email, as per their request, on September 22, 2021. As the Notice of Dispute Resolution Proceeding Package was mailed to the Previous Landlord and the Purchaser the following day on September 23, 2021, I therefore find that the Tenants complied with sections 59(3) an of the *Act* and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the Notice of Hearing were correct and I note that the Tenant had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Previous Landlord, the Purchaser, or agent(s) acting on their behalf.

Although I have reviewed all evidence and testimony before me that that was served in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision will be sent to them by email.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the Two Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Tenants entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me between the Previous Landlord and the Tenant states that the fixed term tenancy commenced on September 1, 2016, and was set to end on September 1, 2017, after which point it could continue on a month-to-month (periodic) basis. Rent was set at \$1,000.00 per month, due on the first, and included water, electricity, heat, storage, garbage and recycling services, parking for two vehicles, and strata fees. The copy before me was not signed. A separate document titled "Tenancy Agreement Addendum" and dated October 1, 2020, states that by way of mutual agreement between the Tenant and the Previous Landlord, the electricity utility bill is being transferred into the name(s) of the Tenant(s). As a result, rent is being reduced to \$700.00 per month, effective October 1, 2020.

The Tenant stated that the Two Month Notice was received by them on August 31, 2021. Branch records show that the Tenants filed the Application seeking cancellation of the Two Month Notice on September 11, 2021.

The Two Month Notice in the documentary evidence before me is in writing on the current version of the form, is signed by the Previous Landlord and dated August 31, 2021, has an effective date of October 31, 2021, and states that the Two Month Notice has been served because all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. A copy of the tenant occupied property – buyers notice to seller for vacant possession form was submitted for my review, wherein the Purchaser requested that the Previous Landlord serve the Two Month Notice with an effective date of October 31, 2021.

The Tenant disputed the validity of the Two Month Notice, arguing that it was not served in good faith. The Tenant stated that a previous Two Month Notice to End Tenancy for Landlord's Use of Property was served on them by the Previous Landlord with an effective date of July 31, 2021, wherein it was stated that the Previous Landlord intended to occupy the rental unit. The Tenant stated that they disputed that Two Month Notice, and it was cancelled as a result, when the arbitrator determined that it had not been served in good faith. The Tenant provided me with the file number related to that hearing, which I have recorded on the cover page of this decision.

The Tenant stated that they do not believe that the second Two Month Notice is valid either, as they do not believe that the Purchaser or their close family member intends to occupy the rental unit, as they have renovated the main house on the property where the rental unit is located, creating three separate units, all of which appear to be vacant. The Tenant also stated that three travel trailers/fifth wheel trailers were moved onto the property and connected to services, all of which appeared to be occupied. Further to this, the Tenant stated that the Landlord owns another home in town, which is rented out, and that they live in another residence in town. As a result, the Tenant stated that they believe the Purchaser intends to re-rent the unit, which could be rented to a new tenant at approximately three times the rental rate they are currently paying.

Although the hearing remained open for 35 minutes, neither the Previous Landlord nor the Purchaser attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies exists between the parties, and that the Tenants disputed the Two Month Notice within the statutory time period set out under section 49(8) of the *Act*.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove the validity of a notice to end tenancy disputed by a tenant falls to the landlord or purchaser, as applicable.

As neither the Previous Landlord nor the Purchaser attend the hearing to provide any evidence in support of the Two Month Notice, and the Tenant argued that it had not been served in good faith, I find that the Previous Landlord and Purchaser have failed to establish on a balance of probabilities that there was cause to end the tenancy under section 49(5) of the *Act* and/or that the Two Month Notice was served in good faith, without an ulterior motive for ending the tenancy. As a result, I grant the Tenants' Application seeking its cancellation and I order that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the *Act*.

As the Tenants were successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a), I therefore authorize the Tenants to deduct \$100.00 from the next months rent payable under the tenancy agreement, as per their request at the hearing, or to otherwise recover this amount from the Landlord.

Conclusion

I order that the Two Month Notice dated August 31, 2021, is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 72(2)(a), I authorize the Tenants to deduct \$100.00 from the next months rent payable under the tenancy agreement, or to otherwise recover this amount from the Landlord.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: January 25, 2022

Residential Tenancy Branch