



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord, AC, and the Tenant, DM, and Legal Advocate, YB, attended the hearing at the appointed date and time. Both parties were each 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 Landlord's mother and father served the Two Month Notice on the Tenant on October 30, 2021 by placing the document in the mailbox. The Tenant confirmed receipt of the Two Month Notice. I find that the Two Month Notice was deemed served on the Tenant on November 2, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

DM applied for dispute resolution for the Two Month Notice on November 9, 2021. DM served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on November 16, 2021 (the "NoDRP package"). DM referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the

Landlord was deemed served with the documents for this hearing five days after mailing them, on November 21, 2021, in accordance with Section 89(1)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant named two people as the Landlords in this matter. In the hearing, the Landlord testified that the second named Landlord was a former family member who helped manage the rentals in the residential property. His name is noted as the Landlord in the tenancy agreement, but the Landlord states he no longer manages the tenancy. I asked the parties if I had their agreement to amend the Landlord's party name in the application. Both parties agreed, and the correct Landlord name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlord is properly named as the only Landlord for the residential property. I amended the Landlord's name and it is reflected in this decision.

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.

The parties agreed that this periodic tenancy began on April 1, 2020. Rent in the amount of \$1,450.00 is payable on the first day of each month. The Tenant paid a security deposit of \$750.00 which the Landlord states she now has.

The reason noted on the Landlord's Two Month Notice was that a close family member, the landlord or the landlord's spouse, will occupy the unit. The Two Month Notice also

states that the Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. The effective date of the Two Month Notice was December 31, 2021.

The Landlord said that she and her sister are the original owners of the residential property which they bought in 2007. The Landlord testified that her parents filled out the Two Month Notice form and served the tenant in the basement suite and the Tenant in this application. The tenant in the basement suite has left that rental unit. The Landlord testifies that she and her sister are not a family corporation.

The Tenant questions the good faith intentions of the Landlord wanting to move into the rental unit. The Tenant testified that there has been a history of eviction notices served on her in this rental property. The Tenant states that the basement suite below her is empty and wonders why the Landlord does not use that space.

In 2007, the Landlord and her sister bought the residential property. It is a duplex, but they converted it to a 4-plex and took in renters. At that time, the Landlord's sister and her husband managed the tenancies in the Landlord's rental units. The Landlord's sister and her husband are no longer a couple, and during the time when the sister's husband managed the property, the Landlord was not aware of the previous eviction notices served on the Tenant.

In October 2021, the Landlord stated her husband received and accepted a job offer in [City]. In anticipation of the move back to BC, and submitted into documentary evidence, the Landlord's family contracted with long distance movers, they notified their daycare providers of the end date of their needed services, and the Landlord coordinated a leave of absence from her work. The move to [City] also allows the Landlord to be closer to her parents and her sister. The Landlord testifies that they are a family of four and the two bedroom basement suite is not big enough for all of them. At present, the Landlord and her family are in [City] bouncing around between friends' homes and waiting to gain access to her home as their new residence.

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 53 of the Act enables incorrect effective dates to automatically change. As the Two Month Notice was deemed served on November 2, 2021, then the correct effective date for the Two Month Notice is corrected to January 31, 2022 pursuant to Section 53(2) of the Act.

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 was deemed served with the Two Month Notice on November 2, 2021. I find that the Landlord's Two Month Notice complied with the form and content requirements of Section 52 of the Act which state:

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
 - (e) when given by a landlord, be in the approved form.*

The Two Month Notice stated the landlord or the landlord's spouse will occupy the unit. The Two Month Notice also stated that the Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. The Landlord clarified in the hearing that she and her sister are not a family corporation. I find the grounds for ending this tenancy are because the Landlord will occupy the rental unit.

The Tenant filed for dispute resolution on November 9, 2021 which was well before the 15 day limit to apply. The Tenant also 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.

The Landlord testified that her husband accepted a new job in [City]. They have moved their family from another province for this new position. The Landlord cancelled her childminding services in the other city and she has coordinated a leave of absence from her job. At present, the Landlord's family is staying with friends in [City] until these residential tenancy matters are completed. I find the Landlord has the good faith intention of doing what she said she plans to do. I believe that she does not intend to defraud or deceive the Tenant and she does not have an ulterior motive. The Tenant may have received previous notices to end tenancy but I find these were not initiated by the Landlord and do not reflect any ulterior motive on the Landlord's part. I find on a balance of probabilities that the Landlord meets the good faith requirement that she intends to move into her residential property with her family, and consequently I dismiss the Tenant's application to cancel the Two Month Notice without leave to re-apply.

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 pursuant to Section 55(1) which will be effective on February 28, 2022 at 1:00 p.m.

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.

Conclusion

The Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective on February 28, 2022 at 1:00 p.m. 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: February 06, 2022

Residential Tenancy Branch