



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 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 October 7, 2021 ("Two Month Notice"), for an Order directing the landlord to comply with the Act, regulation, or tenancy agreement, and to recover the \$100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord, P.N. ("Agent"), 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 it. During the hearing the Tenant and the Agent 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. The Agent said the Landlords had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Agent confirmed that the Landlords had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing, and they confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on his Application, the most urgent of which is the claim to set aside

a Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claim for an Order for the Landlord to Comply with the Act or tenancy agreement is dismissed, with leave to re-apply, depending on the outcome of this hearing.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that the person identified as the Landlord in the Application is the Agent's grandfather. The Agent said that his father, K.N., and brother, M.N., purchased the property from the grandfather.

The Parties disagreed as to why they did not draft a new tenancy agreement; however, the Agent offered to submit a copy of a land title search proving ownership. Based on the evidence before me on this matter, I find that the Tenant provided the wrong name on his Application, and that the Agent's father and brother are currently the Landlords, not the grandfather named as the Landlord in the Application. As such, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

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 a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy 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 Parties agreed that the periodic tenancy has a monthly rent of \$800.00, due on the

first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$400.00, and no pet damage deposit.

The Parties agreed that the Two Month Notice was signed and dated October 7, 2021, it has the rental unit address, it was served in person on October 7, 2021, with an effective vacancy date of December 31, 2021. The Two Month Notice was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse). In this case, the Agent said that his brother, M.N., plans to move into the residential property, of which M.N. is a co-owner.

I asked the Agent why I should confirm the Two Month Notice, rather than cancelling it as the Tenant has requested. The Agent said:

He hasn't paid rent for February, so he must have found a place, and this is the month that he is taking for free. Several people have called us – new landlords – for references. My brother, Michael, wants to move into his property next door.

The Tenant responded, as follows:

I honestly don't believe they acted in good faith. I have nothing bad to say about any of them. I've dealt with [H.] since day one. It's the way they went about it. I received a phone call from [R.], since my daughter was moving in. They demanded a substantial rent increase.... If Michael wanted to move in, why not do just that?

That letter I got was prior to me getting the Two Month Notice – if you read the letter, they're trying to move me out.

On September 2nd, I had a phone call. The issue was because it is a two-bedroom suite, my daughter was going to move in when my son moved out. She'd wanted to raise my rent... I refused. The letter comes after the phone call, and then the Two Month Notice came. A three-step process.

I asked the Tenant what he thought the Landlords were doing, if not making space for one of the owners, Michael, to move in. The Tenant said: "Rent it out for a way higher amount. I believe they are going to do that. They've mentioned that people in the neighbourhood pay more than I do."

The Agent said:

We're willing to provide proof, if in three months or six months Michael is living in the suite. We've been having issues with [the Tenant] having additional adults living there for eight years. Yes, we could have served him with the notice for cause.

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 and onus of proof in this matter:

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 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.

Accordingly, I find that the Landlord has the burden of proving the validity of the Two Month Notice on a balance of probabilities.

I find that the Tenant's focus in the hearing was in part on establishing that the Landlords may have an underlying motive to re-rent the residential property to someone else for a higher rate of rent. However, in the hearing, I advised the Parties about section 51 of the Act, which sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51 (2) of the Act, in addition to getting one month free, such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) 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 Agent said that the Landlords are fully aware of this provision of the Act. I find that section 51 (2) is more likely than not an effective deterrent to doing as the Tenant suggests the Landlords will do when he moves out. Rather, I find that section 51 (2) will prevent the Landlord from not complying with sections 49 and 51 of the Act.

Based on the documentary evidence and testimony before me, and keeping in mind that the burden of proof in this matter is on a balance of probabilities, I find that the Agent has satisfied me that one of the co-owners/Landlords intends in good faith to reside in the rental unit after it is vacated by the Tenant. As a result, I am satisfied that the Landlord had cause pursuant to section 49 of the Act to serve the Two Month Notice on the Tenant and to end the tenancy. I also find that the Two Month Notice issued by the Landlord complies with section 52 of the Act, as to form and content. Accordingly, I confirm the validity of the Two Month Notice, and I dismiss the Tenant's Application wholly, without leave to reapply.

Given the above, and pursuant to section 55 of the Act, I award the Landlord with an **Order of Possession**. Given that the effective vacancy date has passed, the Tenant will have **two days from the date he is served** with the Order to vacate the residential property, pursuant to section 55 of the Act.

As the Tenant was unsuccessful in his Application, I decline to grant him recovery of the \$100.00 Application filing fee.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord's Agent 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** 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: February 08, 2022

Residential Tenancy Branch