



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on October 1, 2021 to dispute the Two-Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, the seek recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 11, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. On the basis of complete disclosure, I proceeded with the hearing.

Issues to be Decided

Is the Tenant entitled to an order that the Landlord cancel or withdraw the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I reviewed the basic terms of the tenancy agreement with both parties, as provided by the Tenant on their Application. They pay \$1,386 per month as of the time of the

hearing. The tenancy started on September 1, 2011. This unit is one of three on the Landlord's property.

The Landlord issued this Two-Month Notice on September 17, 2021. The Tenant provided a copy of this document in their evidence. It provides the effective end-of-tenancy date as November 30, 2021. The reason for the Landlord issuing this is indicated on page 2, where their child will occupy the rental unit.

The Landlord provided detail in the hearing. The primary reason for ending the tenancy is that their child will move to the city and proceed with study at the university there. The original timeline was for the child to move to the city for December 1, 2021. With this Tenant's Application, the hearing significantly delayed matters.

The Landlord reiterated that this was 2.5 months notice to the Tenant about the end of tenancy. They have had to find alternative accommodation for their daughter; in this particular city that endeavour was very difficult and added significant expense. The Landlord provided their child's current tenancy agreement, showing that short-term agreement for 3 months to the end of March 2022. The Landlord also provided verification that their child is attending university. Simply put, their child planned to move to the rental unit, and then resume courses.

As of the date of the hearing the Tenant was waiting through their immigration process for their move to the United States. This process started in June 2020. The Tenant has an interview involved with that process upcoming on March 9. In January 2022 they advised the Landlord of this immigration process and a pending move out from the rental unit, though they provided no firm date to the Landlord.

The Tenant presented that there was no prior communication from the Landlord prior to their serving of the Two-Month Notice. Their first suspicion was that the Landlord wanted to re-possess the rental unit in order to dramatically increase the rent. This was because of the long-term tenancy in which the Landlord had not been able to raise the rent to the current market value. They cited the Landlord's attempt to raise the rent in another unit on the property, in light of a prior rent increase freeze.

The presented a very recent ad for another unit on the property. This shows an amount \$1,300 increased from what the previous tenant paid in that unit. This shows the Landlord likely wants to increase the rent for this Tenant's rental unit, thus ending the tenancy in this manner.

In response to this the Landlord cited their own 30-year experience in being a Landlord. They also described not raising rent at every available opportunity to do so over the years of this tenancy. They are well aware of the serious penalties involved if a Landlord ends a tenancy under false pretexts. They noted the rental ad for the other unit was put in place when that other tenant initiated the end of tenancy on their own.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The *Act* s. 55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant’s Application or uphold the landlord’s notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

I find there is sufficient evidence to show the Landlord’s family member’s need for the rental unit. This is a move to the city by the Tenant’s child, and I find that need is legitimate. In sum, the Landlord is not prevented from ending the tenancy for this reason.

The Tenant provided this is a situation of bad faith where the Landlord is trying to increase the rent for the rental unit. This is a situation where the Landlord has not been able to do so by any other available means for quite some time. I find the Tenant has not shown this to be the case to a sufficient degree to outweigh the evidence and testimony of the Landlord on their own child’s occupancy. The Tenant did not present evidence of prior attempts by the Landlord to raise rent inordinately, or evict other tenants for the sole reason of raising the rent.

The Tenant did not provide testimony or other evidence to show there was any communication with the Landlord that undermines the Landlord’s stated intention on their need for the unit. I find the Tenant’s own submissions on the odd timing for the Landlord’s child to be entering university and resuming studies to be speculative. That information the Landlord provided is not suspect.

There is no evidence to show the Landlord made other indications to the Tenant regarding the need for the rental unit. Without such evidence of conflicting messages or other communication, there are no indications that show the issuance of the Two-Month Notice was done in bad faith. The Landlord showed their child's intent to move to the city in the form of that child's own tenancy agreement, necessitated by not having this rental unit available as planned.

For these reasons, I uphold the Two-Month Notice issued on September 17, 2021 and find it was issued in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the landlord is entitled to an order of possession as the *Act* provides for.

The tenancy shall end with service of the Order of Possession. Because the tenant is not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the tenant. The Landlord must serve this Order of Possession on the tenant. Should the tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

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

Dated: February 11, 2022

Residential Tenancy Branch