



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RR, MNDCT, MNRT, FFT

Introduction

This hearing dealt with two Application for Dispute Resolution submitted by the tenant seeking to cancel a notice to end tenancy, a rent reduction, and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and their son.

I note the landlord provided evidence that the correct address for the rental unit is not that identified by the tenant on their Application for Dispute Resolution but is that of the address provided on the Two Month Notice to End Tenancy for Landlord's Use of Property. As such, I amend the application to reflect the correct address.

I note that because this is an Application for Dispute Resolution submitted by the tenant seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

Should the tenant fails to succeed in cancelling the Two Notice to End Tenancy for Landlord's Use of Property, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on December 13, 2017 for a month to month tenancy beginning on December 13, 2017 for a monthly rent of \$1,200.00 due on the 1st of each month with no security deposit paid.
- A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property issued on September 20, 2021 with an effective vacancy date of November 25, 2021 citing the landlord or the landlord's spouse will be occupying the rental unit.

The landlord testified that their intention is still their spouse and themselves move into the rental unit and requires an order of possession.

Analysis

Section 49(3) of the *Act* allows a landlord to end a tenancy 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,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

A two-month notice may be issued if the landlord, who is an individual, seeks to 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.

Section 49(8) allows a tenant to dispute a notice under Section 49(3) by making an application for dispute resolution within 15 days after the date the tenant **receives** the notice. From the tenant's submissions he received the Notice to End Tenancy on September 25, 2021. As such, I find the tenant had until October 10, 2021 to submit an Application for Dispute Resolution seeking to cancel the Two Month Notice. The tenants' Application was submitted on October 7, 2021.

I am satisfied the tenant submitted their Application for Dispute Resolution within the required time frame.

From the landlord's undisputed testimony and in the absence of the applicant tenant to present his submissions, I find the landlord has established that they intend, in good faith, to move into the rental unit.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on September 20, 2021 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I dismiss both of the tenant's Application for Dispute Resolution, in their entirety, without leave to reapply.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 17, 2022

Residential Tenancy Branch