



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 under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dated November 30, 2021 ("1 Month Notice") pursuant to section 47;
- an Order that the Landlord comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the Tenant's filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Landlord with the Notice of Dispute Resolution Proceeding and his evidence ("NDRP Package") by registered mail but he could not find the receipt for the mailing. The Landlord acknowledged he received the NDRP Package. I find the NDRP Package was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Landlord stated he did not serve any evidence on the Tenant.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If the Tenant is not entitled to cancellation of the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The tenancy commenced on June 16, 2012, for a fixed term ending June 30, 2013, and has continued on a month-to-month basis. The rent was \$2,000.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$1,000.00 on June 17, 2012. The Landlord doesn't recall whether he received the deposit from the former landlord but the Tenant stated he paid the \$1,000.00 security deposit.

The Landlord testified the 2 Month Notice was served in-person on the Tenant on December 1, 2021. The Landlord did not submit a completed Proof of Service, or call any witnesses, to corroborate his testimony on the date and method of service of the 2 Month Notice on the Tenant.

The Landlord stated he purchased the rental unit from the former landlord approximately one year ago. The Landlord stated that he has been staying in hotels when he works on business projects in the Whistler Mountain. The Landlord stated that he now has various projects starting in March 2022 through the rest of next year in the Whistler and Pemberton area. As it is getting more expensive to stay in hotels in the area Whistler, the Landlord stated he now wants to use the rental unit.

The Tenant testified the 2 Month Notice stated the effective date for move out was January 31, 2022. However, he stated the 2 Month Notice was served on him on December 1, 2022, and that the Act provided that the earliest effective date was February 28, 2022. The Tenant submitted a letter dated December 8, 2021, in which he advised the Landlord that, pursuant to section 53 of the Act, the effective date of the 2 Month Notice was deemed to be February 28, 2022. The Tenant also stated he only received pages 1 and 2 of the 2 Month Notice was served on him together with pages 1 and 2 of a partially completed Proof of Service on Form RTB-34. The Tenant did not

provide any testimony or evidence the Landlord intended to defraud or deceive the Tenant or had an ulterior motive for ending the tenancy or that the Landlord was trying to avoid the obligations under the Act.

The Landlord stated he arranged for the 2 Month Notice to be served on the Tenant by third parties. The Landlord stated he also sent a Proof of Service on Form RTB-34 for the third parties to complete after service of the 2 Month Notice on the Tenant. The Landlord was unable to provide an explanation as to why the Tenant only received two pages of the 2 Month Notice or why the Tenant had been served with a partially completed Proof of Service. The Landlord did not deny the possibility that the third parties who served the 2 Month Notice on the Tenant may have mixed the up the two page of the Proof of Service with the four pages of the 2 Month Notice with the result that Tenant received the two pages of the Proof of Service and the first two pages of the 2 Month Notice.

Analysis

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

[...]

(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,

- (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

[...]

- (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*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (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
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The Landlord stated the 2 Month Notice was served on the Tenant in person on December 1, 2021. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or December 16, 2021. The records of the Residential Tenancy Branch disclose the Tenant filed his application for dispute resolution to dispute the 2 Month Notice on December 13, 2021. I find the Tenant made his application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

The 2 Month Notice stated the effective date for the Tenant to move out of the rental unit was January 31, 2022, which was prior to the earliest date permitted by section 49(2)(a) of the Act. Section 53 of the Act states:

- 53(1)** If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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
- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Pursuant to section 53(2), the effective date of the 2 Month Notice is deemed to be the earliest date that complies with section 49(2)(a), or February 28, 2022.

Residential Tenancy Policy Guideline# 2A ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The Landlord's testimony that he intends in good faith to move into the rental unit was credible and compelling. The Tenant did not disagree with the Landlord's intent to occupy in good faith the rental unit. I find the Landlord was acting in good faith when he served the 2 Month Notice on the Tenant. I find the Landlord has established grounds to end the tenancy pursuant to section 49(3) of the Act on the basis that he intends in good faith to occupy the rental unit. pursuant to section 49(3) of the Act.

I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 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 to the landlord an order of possession of the rental unit if
- (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.

The Tenant testified he was not served with pages 3 and 4 of the 2 Month Notice. Section 52 of the Act states:

- 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 Landlord did not provide a Proof of Service or call the witnesses to corroborate his testimony that all four pages of the 2 Month Notice were served on the Tenant. Furthermore, the Tenant submitted a copy of a partially completed Proof of Service on Form RTB-34, a form that would not be served on a Tenant concurrently with service of a notice to end tenancy. I find the Landlord has not established all four pages of the 2 Month Notice were served on the Tenant. Based on the above, I find that the 2 Month Notice did not comply with the form and content requirements of section 52 of the Act. As such, I cancel the 2 Month Notice and it is of no force or effect and the tenancy is to continue until ended in accordance with the Act.

I have made no findings on the merits of the 2 Month Notice. If the Landlord wishes to pursue eviction, he is entitled to issue a new Notice, such that it complies with section 52 of the Act.

The Tenant sought an order that the Landlord comply with the Act, Regulations and/or tenancy agreement. More specifically, the Tenant was seeking an order for the Landlord complying with Act in respect of serving the 2 Month Notice and providing all pages of the 2 Month Notice. As I have cancelled the 2 Month Notice as it did not comply with section 52 of the Act, the Tenant's claim for the Landlord to comply with the Act, Regulations and/or tenancy is now moot. Based on the above, I dismiss this claim without leave to reapply.

As the Tenant has been successful in this application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion

I allow the Tenant's application to cancel the 2 Month Notice. The 2 Month Notice is of no force or effect, and the tenancy is to continue until ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee.

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 12, 2022

Residential Tenancy Branch