



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNL**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. 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; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenants, GS and MS, attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Tenants with the Two Month Notice on October 29, 2021. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on October 29, 2021 pursuant to Section 88(a) of the Act.

The Tenants applied for dispute resolution on November 10, 2021. I find the Tenants applied on time, within 15 days of receiving the Two Month Notice.

The Tenants confirmed that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on November 16, 2021 (the "NoDRP package"). The Tenants testified that they served the Landlord with the NoDRP package by Canada Post via registered mail on November 16, 2021. They referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. 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 Sections 88(c) and 89(1)(c) of the Act

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's Two Month Notice?
2. If unsuccessful in their application, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

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.

This periodic tenancy began on December 1, 2018. Monthly rent is \$1,400.00 payable on the first day of each month. A security deposit of \$700.00 was collected at the start of the tenancy.

The reason noted on the Landlord's Two Month Notice was 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). The Landlord did not specify which close family member will occupy the unit.

The Tenants question the Landlord's good faith and honest intention in ending this tenancy for Landlord's use. The Tenants testified that the Landlord told them he sold the property, but they have not heard anything since he gave them this information.

The Tenants want the Landlord's Two Month Notice to be cancelled.

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Section 49 of the legislation is the relevant section in this matter. Residential Tenancy Policy Guideline #2A – Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member helps parties understand the legislative intent and issues that are likely to be relevant when a landlord seeks to end a tenancy for landlord's use. Most importantly,

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

1. *intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;*

...

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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

...

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 Tenants were told by the Landlord that he sold his property, although they have heard no further information as of this hearing date. The Landlord did not attend this hearing and provide testimony about his good faith intentions with respect to the property. I find that the Landlord has not proven his case on a balance of probabilities, and I cancel his Two Month Notice.

Section 49 states:

Landlord's notice: landlord's use of property

49 ...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, ...*
- (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*

...

I find that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act. The Landlord served the Tenants with the Two Month Notice on

October 29, 2021. The Tenants applied for dispute resolution on November 10, 2021 which I find was within the 15 days permitted under the Act to apply for dispute resolution. Based on the undisputed testimony of the Tenants, and because I find the Landlord has not met his onus of proof, and I have cancelled the Landlord's Two Month Notice, the Tenants' application to cancel the Two Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

In addition, having been successful, I find the Tenants are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Two Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application 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 Act.

Dated: February 1, 2022

Residential Tenancy Branch