



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OLC MNDCT FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 23, 2021 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for a monetary claim of \$350.00 for the return of the balance of the security deposit, and to recover the cost of the \$100.00 filing fee.

The tenant, landlord GVH (landlord), co-landlord JAVH (co-landlord) and an agent for the landlord/spouse of GVH, MVH (agent) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants and were affirmed. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised any concerns regarding the service of the application or documentary evidence and that both parties confirmed that they had the opportunity to review evidence served upon them, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously

made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Also, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 2 Month Notice and the filing fee. 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 cancel the 2 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to the recover of the cost of the filing fee under the Act?
- If no, are the landlords entitled to an order of possession under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2019 and reverted to a month-to-month tenancy after August 1, 2020. Monthly rent in the amount of \$1,500.00 is due on the first day of each month and has not been increased during the tenancy.

The tenant confirmed that they were served on September 24, 2021 with the 2 Month Notice dated September 23, 2021. The effective vacancy date on the 2 Month Notice is listed December 1, 2021, which has passed. The tenant disputed the 2 Month Notice on October 8, 2021, which was within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse

The parties agreed that the rental unit is a 2-bedroom unit and that current rent is \$1,500.00 per month. The agent stated that due to financial hardship, landlord GVH and their spouse, the agent MVH, plan to vacate the home they own on JD (Other Property) and move into the rental unit the Other Property is a 3-bedroom unit that they believe they could rent for between \$2800.00 to \$3,700.00 per month to help reduce their debt.

The landlords submitted a document which indicates the following debt:

1. \$25,000.00 owing to the parents of MVH (agent).
2. \$6,000.00 owing to co-landlord, JAVH.
3. \$5,000.00 credit card loan

The landlords testified that they also own 2 commercial properties and that the rent for the 2 commercial properties, and the rental unit cover the mortgages for their 2 home mortgages and the commercial properties, plus taxes, utilities, repairs, etc.

JOVH testified that there is a huge difference between the Other Property and the rental property in terms of the rental property being much less in heating costs, etc.

The tenant's position is that the landlord could seek other loans from either a financial institution or family of the GVH and MVH and that they should not be evicting the tenant without either raising the rent in their commercial properties, selling the rental property, or take out another loan.

MVH responded by stating that her husband, GVH has a disability and only works part-time with reduced hours due to that disability. In addition, MVH testified that JOVH has no additional money to lend to GVH and MVH as JOVH and her husband GVH Senior (Rick) are maxed out and with 4 children of their own, JOVH and Rick are unable to lend any additional money to GVH and MVH.

The tenant asked the GVH and MVH why JOVH cannot assist with another loan, and MVH responded by stating that JOVH is not an owner of the rental unit or the Other Property or the commercial properties and that JOVH and Rick do not pay the bills and that GVH and MVH would not ask them to do so.

MVH testified that they have gone weeks without food and had to bury their own dog that passed versus being able to afford to take care of him through a veterinary clinic. MVH stated that the tenant has made many assumptions of the landlord's financial position which are just not true.

The tenant raised an issue regarding JOVH taking out a building permit for another property. MVH stated that is not relevant as JOVH does not own the rental property and as co-landlord only takes care of budgeting for the rental property. There is no evidence before me that the building permit issue relates to the rental property and GVH.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – I find the tenant disputed the 2 Month Notice within the 15-day timeline provided under section 49(8)(a) of the Act and as noted above. The reason indicated on the 2 Month Notice is "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse – The landlord or the landlord's spouse."

While the tenant raised the issue of bad faith by alleging that the 2 Month Notice was issued just to be able to increase the rent, I disagree with the tenant. I find the landlords have outstanding debts and that they have the right as the property owners to move from a 3-bedroom home to a 2-bedroom unit as a way to save money to put towards their debt. The landlords only are required to reach the 51% threshold, the balance of probabilities and I find the landlords have reached that threshold. I find that the landlord's testimony is logical that they can move into the rental unit where rent is currently \$1,500.00 for 2-bedrooms, when there are only two of them residing in a unit and rent out the Other Property which is 3-bedroom home for between \$2,800.00-\$3,700.00 per month.

I also disagree with the tenant that the landlords should have to sell the rental property or take on additional loans to avoid evicting the tenant. The 2 Month Notice exists under the Act for situations just like this before me. Therefore, I find the landlords have provided sufficient evidence that the 2 Month Notice was issued in good faith and for the reason stated on the 2 Month Notice. I find the 2 Month Notice issued by the landlords to be valid. Therefore, **I dismiss** the tenant's application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice.

Section 55 of the Act states:

Order of possession for the landlord

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.**

[emphasis added]

Given the above and considering that I find the 2 Month Notice complies with section 52 of the Act as it was signed and dated and included all the required information under the Act, I find that the landlords are entitled to an order of possession effective **February 28, 2022 at 1:00 p.m.** I find the tenancy ended on December 1, 2021, which was effective vacancy date listed on the 2 Month Notice.

As the tenant's application was not successful, I do not grant the tenant the recovery of the filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed. I uphold the 2 Month Notice issued by the landlord.

The landlord has been granted an order of possession effective February 28, 2022 at 1:00 p.m. The tenancy ended on December 1, 2021. The order of possession must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenants are reminded that they could be held liable for all costs to enforce the order of possession if they fail to vacate by February 28, 2022 at 1:00 p.m.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlords only for service on the tenant.

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 18, 2022

Residential Tenancy Branch