



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, LAT, FFT

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on November 22, 2021. The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 12, 2021 (the Two Month Notice);
- a monetary order for monetary loss or other money owed;
- an order setting or suspending conditions on the Landlord's right to enter the rental unit;
- an order granting authorization to change the locks to the rental unit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was accompanied by two witnesses, KL and MC. All in attendance provided a solemn affirmation at the beginning of the hearing

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding and evidence by registered mail. The Landlord acknowledge receipt. The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by attaching it to the Tenant's door. The Tenant acknowledged receipt.

Neither party raised any concerns about service or receipt of the documents to be relied upon during the hearing. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were in attendance and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue, which is not related to the remainder of the claims. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply as appropriate considering my findings below.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began in April 2004, that rent of \$994.00 per month is due on the first day of each month, and that the Tenant paid a security deposit of \$350.00, which the Landlord holds.

The parties agreed further that the rental property is a house that is divided into an upper rental unit and a lower rental unit. The Tenant resides in the upper unit (#409). The lower unit (#407) is rented to another tenant.

There was no dispute that GC, a purchaser of the rental property, has indicated his intention to occupy the Tenant's rental unit. As noted above, type-written requests asking the Landlord to issue "the required notice" were submitted into evidence. As a result, the Landlord issued the Two Month Notice. The Tenant confirmed receipt of the Two Month Notice on November 13, 2021.

The Landlord testified that he listed the property for sale on Facebook. MC and GC contacted the Landlord, viewed the rental property, and made an offer to purchase it. The Landlord provided the following documents in support:

- A copy of a BC Assessment statement dated November 11, 2021, providing a basic description of the rental property which includes the civic address and the parcel ID;
- Copies of type-written letters from GC dated June 23 and November 12, 2021, requesting that the Landlord give the Tenant “the required notice” as he “will be moving into the top unit”;
- A copy of a letter from Scotiabank to GC and MC dated November 10, 2021, confirming mortgage approval for the purchase of the rental property;
- A copy of a signed Contract of Purchase and Sale dated June 14, 2021; and
- Copies of two amendments to the Contract of Purchase and Sale extending the closing date.

The Landlord also testified that he recently hurt his back and is retiring. Letting go of some rental properties are part of his retirement plan.

MC testified that he and his son, GC, had been looking for a property for about one year when they saw the Landlord’s property listed for sale on Facebook. MC and GC looked at the property and made an offer. MC testified he has no past history with the Landlord and is purchasing the property with his son, who wants to purchase his first house and get his life going.

The Tenant testified that this is the third hearing related to the rental property and argues that the Landlord is not acting in good faith. Previous decisions of the Residential Tenancy Branch were referred to only indirectly during the hearing but copies were submitted into evidence.

Briefly, the first decision was issued on April 29, 2021. The hearing was convened to address the Tenant’s request for an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use, dated December 27, 2020 (the Four Month Notice). After hearing the evidence and submissions of the parties, the arbitrator found she was not satisfied that the Four Month Notice was issued in good faith. Rather, the arbitrator concluded it was more likely than not that the Four Month Notice was issued to obtain a higher rent. Accordingly, the Four Month Notice was cancelled.

The second decision was issued on November 8, 2021. That hearing was convened to address the Tenant's request for an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 24, 2021 (the Previous Two Month Notice). After hearing the evidence and submissions of the parties, the arbitrator found that a key condition of the Contract of Purchase and Sale had not been removed and noted a discrepancy in the rental address. As a result, the arbitrator concluded there was insufficient evidence to uphold the Previous Two Month Notice and it was cancelled.

The file numbers of the two previous hearings are provided above for ease of reference.

The Tenant testified that he believes the sale is a ruse. He referred to conversations with the Landlord about rent increases although these were not supported by documentary evidence. The Tenant also testified that he has been assured throughout the tenancy that the property would never be sold. The Tenant testified to his belief that the property has not sold because it is still in the Landlord's name.

The Tenant also testified that the floors and the cabinetry in the rental unit are old and stated he would move out if he could afford rent elsewhere. He questioned why GC would want to purchase the rental property. The Tenant testified that he has lived in the rental unit for 18 years and has not done anything wrong. He believes the Landlord just wants more money.

The parties and MC agreed at the end of the hearing that if the Two Month Notice is upheld, the order of possession could be made effective on April 30, 2022.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49(5) of the Act permits a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy on the basis that the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

Policy Guideline #2A confirms a notice to end tenancy issued under section 49(5) of the Act must be issued in good faith. Good faith means a landlord is acting honestly and that they intend to do what they say they are going to do, does not intend to defraud or deceive the tenant, does not have an ulterior purpose for ending the tenancy, and is not trying to avoid obligations under the Act or the tenancy agreement.

The Tenant submitted that the Landlord is not acting in good faith. When a tenant makes this claim, the burden rests with the Landlord to demonstrate good faith.

In this this case, I find the Landlord has demonstrated that he has acted in good faith. I accept the evidence of MC who testified that he and GC are purchasing the property together as a first home for GC. I am satisfied that GC, a purchaser of the rental property, intends to occupy the Tenant's rental unit and has asked the Landlord, in writing, to give notice to end the tenancy. I accept that that the conditions on which the sale depends have been satisfied and that the purchaser is merely waiting for vacant possession.

I also find that the Tenant's testimony was inconsistent throughout the hearing. Although the Tenant submitted that the Landlord had not acted in good faith, he also testified that he believed the testimony of MC and acknowledged that the documents submitted by the Landlord were valid. The Tenant relied heavily on his belief that it is not fair to end the tenancy in light of the Landlord's alleged promise he would never sell the rental unit. The Tenant also relied upon the fact that he has lived in the rental unit for 18 years and cannot afford increased rent elsewhere. The Tenant also appeared to be misinformed concerning the steps involved in a real estate transaction. As a result, I prefer the evidence of the Landlord and MC where it differs from the Tenant's evidence.

With respect to the previous decision dated April 29, 2021, the arbitrator found the Landlord was not acting in good faith but was trying to obtain a higher rent. However, the Four Month Notice in that case was as issued roughly one year before the Two Month Notice at issue in this proceeding. Further, I find that the findings of the arbitrator in the previous hearing do not prevent the Landlord from later selling the rental property and, upon request by the purchaser, taking steps to end the tenancy in accordance with the Act.

With respect to the previous decision dated November 8, 2021, the Previous Two Month Notice was cancelled due to the Landlord's failure to provide sufficient evidence that a key condition of the Contract of Purchase and Sale had been removed and due to a discrepancy in the rental address. It was not cancelled because the arbitrator made a finding that the Landlord was not acting in good faith. As a result, I find it is more likely than not that the Landlord issued the Two Month Notice that is the subject of this hearing to correct errors in the previous application.

Considering the above, I find the Landlord has provided sufficient evidence in support of the Two Month Notice. Therefore, the Tenant's application is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant the Landlord an order of possession. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the Act. Accordingly, I grant the Landlord an order of possession, which will be effective on April 30, 2022, at 1:00 at 1:00 p.m. as agreed by the parties.

Conclusion

The Tenant's request for an order cancelling the Two Month Notice is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, the Landlord is granted an order of possession which will be effective on April 30, 2022, at 1:00 p.m. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: March 14, 2022

Residential Tenancy Branch