



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FFT

Introduction

This hearing was convened as a result of the tenant's 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 November 16, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenant, landlord MK (landlord), purchaser, GC (purchaser) and legal counsel for the purchaser, SG (counsel) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. 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. The tenant, the landlord and the purchaser were affirmed. Counsel was not affirmed as they have already sworn an oath when called to the Bar.

As neither party raised any concerns regarding the service of documentary evidence, I find the parties to be sufficiently served.

Preliminary and Procedural Matters

The participants 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 participants 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 participants 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. None of the participants had any questions about my direction pursuant to RTB Rule 6.11.

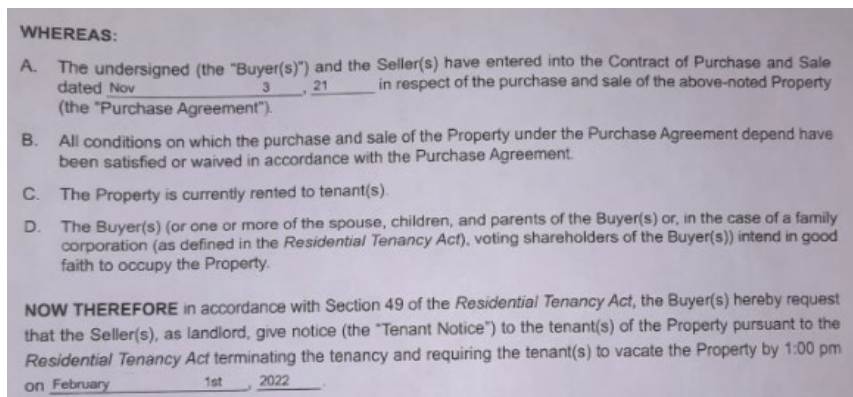
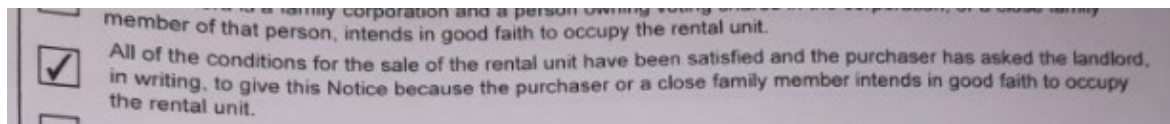
In addition, the participants confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?
- If yes, if the tenant entitled the filing fee?
- If no, is the landlord entitled to an order of possession?

Background and Evidence

The tenant confirmed that they were served on November 16, 2021 with the 2 Month Notice dated the same date. The effective vacancy date on the 2 Month Notice is listed as February 1, 2022, which has passed. The tenant disputed the 2 Month Notice on November 23, 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:



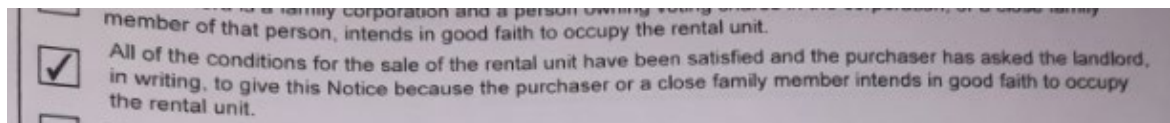
In addition, the purchaser testified that they have removed the subject for sale and counsel submitted that the completion date was amended until April 15, 2022, due to the tenant disputing the 2 Month Notice and not vacating by February 1, 2022, the effective vacancy date listed on the 2 Month Notice.

The parties agreed that the tenant has paid rent for all months including March 2022. Based on the evidence before and the considering the Contract and Buyers Notice before, the parties were advised that I find the 2 Month Notice was issued in good faith based on the testimony and documentary evidence before me, which I will address further below.

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 – The tenant disputed the 2 Month Notice by raising good faith during the hearing. The reason indicated on the 2 Month Notice is:



I afford significant weight to the purchaser's affirmed testimony that they have removed the subjects from the Contract and that both the purchaser and counsel have confirmed that the completion date was extended to April 15, 2022 due to the tenant refusing to vacate the rental unit by February 1, 2022, the effective vacancy date listed on the 2 Month Notice. The onus of proof is on the landlord and purchaser to support that the 2 Month Notice was issued in good faith, and I find that it was based on the Contract and Buyers Notice, which I find are lawful and support that the purchaser intends to occupy the home once the completion date arrives, April 15, 2022.

I also find that a landlord is legally entitled to sell their property, and that the purchaser may ask the seller in writing to issue a 2 Month Notice on behalf of the purchaser, which I find is the situation before me. Therefore, I find the tenancy legally ended February 1, 2022, the effective vacancy date listed on the 2 Month Notice.

I find the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid and was issued in good faith. **I dismiss** the tenant's application to cancel the 2 Month Notice and **uphold** the 2 Month Notice issued by the landlord with an effective vacancy date of February 1, 2022. Section 55 of the Act applies and 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 is signed and dated and fully completed, I find that the landlord is entitled to an order of possession effective **March 31, 2022 at 1:00 p.m.** I have used this date as the tenant has been overholding the rental unit beyond February 1, 2022. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

As the tenant's application was dismissed, **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 without leave to reapply. I uphold the 2 Month Notice issued by the landlord.

The tenancy ended February 1, 2022.

The landlord has been granted an order of possession effective March 31, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Should the tenant fail to vacate the rental unit by March 31, 2022 by 1:00 p.m. the tenant could be held liable for all costs related to enforcing the order of possession.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord and purchaser for service on the tenant, as required.

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: March 14, 2022

Residential Tenancy Branch