



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for 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.

The hearing was conducted via teleconference. The Landlords, DJ and RJ, Landlord's Agent, VC, and the Tenant, KD, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Landlord, RJ, and the Landlord's Agent, VC, served the Two Month Notice on the Tenant on November 10, 2021 by placing the document in her mailbox. The Landlords provided a proof of service document for the Two Month Notice. The Tenant confirmed receipt of the Two Month Notice. I find that the Two Month Notice was deemed served on the Tenant on November 13, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenant testified that she served the Landlords with the Notice of Dispute Resolution Proceeding package for this hearing on November 24, 2021 by Canada Post registered mail (the "NoDRP package"). The Tenant also served her evidence package on the Landlords on March 1, 2022 by Canada Post registered mail. The Tenant referred me to the Canada Post registered mail receipts with tracking numbers submitted into

documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Landlords confirmed receipt of the Tenant's NoDRP package and the evidence. I find that the Landlords were deemed served with the NoDRP package and evidence on November 29, 2021 and March 6, 2022 respectively, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant named one Landlord and the Landlords' Agent as the Respondent party. In the hearing, the Landlord's Agent said he was the Landlords' real estate agent, and he has no interest in the residential property. The residential property was owned by the two Landlords. I asked the parties if I had their agreement to amend the Landlords' party name in the application. All parties agreed, and the correct Landlord name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlords are properly named as both former owners of the residential property and not including the Landlords' Agent's name. I amended the Landlords' names and it is reflected in this decision.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, are the Landlords entitled to an Order of Possession?

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.

The Landlords testified that this periodic tenancy began on March 7, 2018, while the Tenant stated the tenancy began in November 2017. Monthly rent is \$250.00. A security

deposit of \$250.00 was collected at the start of the tenancy and is still held by the Landlords.

The reason noted on the Landlords' Two Month Notice was that "*All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*" The effective date on the Two Month Notice was January 31, 2022. The Landlords' Agent also uploaded a '*Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession*' demonstrating that the buyers are seeking exclusive possession of the residential property.

The Landlords' Agent testified that the completion date of the property sale was January 15, 2022. The new owners are brothers, and the plan was that one brother would live in the main house, and the other brother would live in the rental unit. The new owners are in possession of the residential property, they are both living in the main house and they want exclusive possession of the whole residential property.

The Tenant testified that the rental unit had substantial damage and needed emergency repairs. She states that she doubts the new owners want to occupy it without the repairs being completed. She stated that the new owners have viewed the rental unit twice.

The Landlords are seeking an Order of Possession, and the Tenant is seeking to cancel the Landlords' Two Month Notice.

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.

Section 49 of the Act is the relevant part of the legislation in this matter. It states:

Landlord's notice: landlord's use of property

49 ...

(5) *A landlord may end a tenancy in respect of a rental unit if*

- (a) *the landlord enters into an agreement in good faith to sell the rental unit,*
- (b) *all the conditions on which the sale depends have been satisfied, and*
- (c) *the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) *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;*

...

- (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*

The Landlords' Two Month Notice was deemed served on the Tenant on November 13, 2021. I find the Two Month Notice satisfies the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on November 22, 2021. I find that the Tenant has filed for dispute resolution in time pursuant to Section 49(8)(a) of the Act.

The new owners provided the required documentation that they want vacant possession of the residential property. At present, the new owners are living in the main house on the residential property. The Tenant testified that the new owners have viewed the rental unit twice prior to the purchase. The Tenant states that she does not believe that new owners would want to live in the rental unit as it needs emergency repairs. I see this as she is questioning their good faith intentions. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

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.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. 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.

I find especially since the new owners are living in the main house of the residential property, that they have the good faith intention of occupying the rental unit as per their plans. I find that based on the testimony of the Landlords and the documentary evidence uploaded by the party that the Landlords entered into an agreement in good faith to sell the rental unit, they proved all the conditions for the sale of the residential property were satisfied, and that the buyer of the property has asked the Landlord, in writing, to give notice to end the tenancy because the purchasers intend, in good faith, to occupy the unit. The property closing date was January 15, 2022. The Landlords provided notice to the Tenant by serving a Two Month Notice for Landlord's use. Based on the evidence from the Landlords, on a balance of probabilities, I find that this tenancy must end due to the Landlords' use of property, and especially because the property has sold and the new owners are living in the main house on the residential property.

I caution the Landlords and the new owners to regard Section 51 of the Act regarding: **Tenant's compensation** after a Section 49 notice, which comes into play when the Landlord does not fulfil the stated purpose in their notice. Based on the Landlords' documentary evidence submitted I am satisfied that the Landlords have proven, on a balance of probabilities, that the buyers have the good faith intention to occupy the rental unit, and I dismiss the Tenant's application to cancel the Landlords' Two Month Notice without leave to re-apply.

As the Tenant failed in her application, I must consider if the Landlords are entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

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.*

I previously found that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act. I believe that the new owners have the good faith intention to occupy the rental unit and I uphold the Landlords' Two Month Notice. I grant an Order of Possession to the Landlords which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application to cancel the Landlords' Two Month Notice is dismissed, and the Landlords are granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

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: March 14, 2022

Residential Tenancy Branch