



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 Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated December 26, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of their filing fee.

The Tenants, an advocate for the Tenants, C.H. ("Advocate"), the Landlord, and a translator for the Landlord, R.H. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord confirmed that he had received the Application, Notice of Hearing, and evidentiary documentation from the Tenants, who said they served the Landlord with their documents in person and via email on January 23, 2022. However, the Landlord said that he did not serve the Tenants with the evidence he uploaded to the RTB; as this is in breach of the Rules requiring all respondents to serve the applicants with the respondent's evidence before the hearing, I cannot consider the Landlord's evidence in making my Decision. It is a breach of the rules of administrative fairness for the Tenants to not have a chance to see what the Landlord intended to rely on in this proceeding. Rule 3.15 states that "the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they

confirmed these addresses in the hearing. The Advocate also provided his email address for delivery of the Decision. The Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the tenant's application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. Usually, this is the person applying for dispute resolution. However, sometimes the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord for the Tenants' claims in this proceeding.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2019, with a monthly rent of \$400.00, due on the first day of each month. The Parties agreed that the Tenants did not pay the Landlord a security or pet damage deposit.

The Tenants submitted a copy of the Two Month Notice they received from the Landlord. The Parties agreed that the Two Month Notice was signed and dated December 26, 2021, it has the rental unit address, and it was served by leaving a copy in the Tenants' mail box or mail slot on December 28, 2021. The Two Month Notice had an effective vacancy date of February 28, 2022. It was served on the grounds 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.

In the hearing, I asked the Landlord why I should confirm the Two Month Notice and give him an order of possession of the rental unit, rather than cancelling it, as the Tenants have requested. He responded, as follows:

Because we bought this property and so my parents can move in close to us. They have already sold their house in Vancouver, so they want to live in this property close to us.

The Tenants said:

During the whole process of sale, it was communicated by our previous landlord that he wanted to sell to someone who would keep the tenancy. He said [the purchaser] was going to keep the property as a rental, and we would be stay. But as soon as he bought it, he tried to make us sign a new agreement with the end date of February 28. It seems he doesn't have a full understanding of how the RTB process is going. It has been extremely stressful for us as to how we are going to move forward.

The Landlord replied through his Translator:

When he purchased the property, the tenancy agreement was not given to him, and not the deposits for Tenants. [The original landlord] let him know that Tenants will be able to move out by February 28, and that was what he understood. That was ample time. He doesn't know anything about deposits, it's not in the lease agreement he has. It was just month to month, and by February 28th, the Tenants would be able to move out.

But he served the Two Month Notice, and yes, he wanted to see what the situation was like, but he tried to text them or call them. When he purchased the property, he tried to give them a new lease agreement, but they didn't want to sign it, so he talked to them to see where they could go from there. After he purchased the property there were these issues.

I asked the Landlord why he did not request vacant possession from the seller when he purchased the property, and he replied:

The previous owner's agent talked to us, and they said they are moved out by February. When he had both properties, the previous owner said Tenants would move out by February 28, and then his parents could move in. That time frame he was fine with it.

I offered the Parties an opportunity to make any last statements before I ended the hearing. The Tenants said:

Yes, actually, a couple of things. On March 1st in discussions with [the Landlord], he mentioned that he wanted us to move out, so that he could renovate the house so that he could move in. He had purchased it without seeing the house at all. He has plans to gut the place, but he has to serve us with a Four Month Notice for that. That was my understanding.

The Landlord said:

When he purchased the property, it was already known that he would get the property for his parents. The previous owner had a letter saying he went to the RTB trying to get a letter to get the Tenants out, but [the Landlord] had to do it. His evidence is what he had that wasn't given to the Tenants. The previous owner said that once he purchased the property, him as the new owner has to serve the notice. The previous owner said he cannot do it.

The Tenants said:

Not to sound like a jerk, but it's not our fault that he didn't do things properly to get the result that he wanted. But if he didn't do the research on his side, we should not be bearing the results. It's not my job to train him how to be a property Landlord

The Landlord said:

[The Landlord] was trying to do everything according to the law. He doesn't get a lease agreement from previous owner; he doesn't know about the Tenants from the previous owner. So, he tries to talk to both Tenants to get a lease in place, but the conversation would not be able to get a new lease in place.

Buying the property was for the parents to move in, because they sold their

property. They want to move in – the main reason is they get it to be closer to the whole family.

I asked the Landlord about his plans to renovate the residential property, and he said it would involve painting and flooring, basically, and then they are going to move in. He'll clean up the lawn, too, he said.

Analysis

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

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. If the residential property is sold, either the seller or the buyer may provide the tenants with a two month notice to end the tenancy for the landlord's use. I infer from the Landlord's testimony is that the previous owner was not as truthful or dependable as he could have been. However, I do not find that the new owners – the Landlord – did anything wrong in this situation.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that both Parties' testimony in the hearing indicates that the Landlord intends to take over the entire property, including the rental unit, for his own and his parents' use. Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55 of the Act. As the effective vacancy date of the Two Month Notice has passed and the Tenants are overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenants.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the **Parties should be aware** that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenants may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenants under section 51 (1), **if steps have not been taken to accomplish the stated purpose for ending the tenancy** under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, **the Landlord must pay the Tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.**

Conclusion

The Tenants are unsuccessful in their Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenants' Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: April 14, 2022

Residential Tenancy Branch