



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both parties attending confirmed they were authorized to represent the other named applicant and respondent, respectively.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the tenants entitled to recovery of their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on August 1, 2020. The monthly rent is \$1,300.00 payable on the first of each month. The rental unit is a basement suite of a detached home with other occupants residing on the main floor suite.

There was an earlier hearing under the file number on the first page of this decision pertaining to an earlier Notice to End Tenancy for Landlord's Use dated February 27, 2021. That hearing resulted in a settlement under the following terms:

1. The Notice of February 27, 2021 is cancelled and of no force or effect.
2. The Tenants will continue to have possession of the rental unit under the same terms of the existing tenancy agreement.
3. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this Application.

The landlord issued the present 2 Month Notice dated January 19, 2022 indicating the reason for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member. The landlord discloses that the intended occupants are the landlord or the landlord's spouse and the child of the landlord or their spouse.

The respondent landlord CY testified that they and the other named respondent FY are agents for the property owner KSY and it is KSY, their spouse and their adult child who intend to occupy the rental unit.

The landlords provided written submissions and documentary evidence of the landlord's intent to occupy the rental unit. The landlords submit that they currently reside outside of the province but due to declining health of family members residing near the rental unit, they wish to relocate. The landlords submitted evidence of ongoing correspondence between the parties informing them of their intent, correspondence to the upstairs occupants expressing their intentions, receipts and invoices for packing materials, moving services and airplane tickets in support of their intentions.

The landlord CY testified that the previous 2 Month Notice was issued for unrelated reasons which were not as urgent and they were able to come to a settlement with the tenants.

The tenants made some submissions questioning the family composition of the landlord and the identity of the individuals who intend to occupy the rental suite. The tenants made some reference to the landlord FY providing changing accounts over time, a sale of property and previous negotiations.

Analysis

Section 49(8)(a) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (3) or (4) the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was served on January 20, 2022. The tenants filed their application for dispute resolution on January 25, 2022. I therefore find that the tenants are within the time limits provided under the *Act* to dispute the 2 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 2 Month Notice.

In the present case the landlord submits that the rental unit will be occupied by the owner of the property, KSY, their spouse and adult child.

Section 1 of the *Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement;

Section 49(1) provides the following definition:

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest,

I am satisfied with the undisputed evidence that KSY, is the owner of the rental unit with reversionary interest in the property. I therefore find that KSY meets the definition of landlord pursuant to the *Act*.

I am satisfied that the intended use of the rental unit for occupation by KSY, their spouse and their child falls within the basis for ending a tenancy pursuant to section 49(3).

The tenant raised the issue of the intention of the landlord and his confidence in the plan the landlord says they have; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In the present circumstances, I am satisfied with the preponderance of evidence of the landlord including their testimony and documentary materials that the landlords intend in good faith to use the rental unit for the stated purpose on the 2 Month Notice. I find the explanation provided by the landlord to be cogent, reasonable and supported in the documentary materials. I find it reasonable that the landlord would wish to relocate to be geographically closer to family members and I find sufficient evidence that they have expressed their intention clearly and consistently to others.

I find the landlord provided reasonable explanation of their intention to occupy the whole rental property. I find it reasonable that the landlord's family would desire the whole detached home given that their child is an adult with corresponding, greater desire for space and privacy.

I am satisfied with the explanation given by the landlord that the present 2 Month Notice is unrelated to the earlier notice or any previous interactions between the parties. The landlords gave consistent testimony about the changes in their life circumstances that have led to the issuance of the present notice and that they have made concrete plans to relocate.

Based on the totality of the evidence, I find the landlords have met their burden of proof on a balance of probabilities. I therefore, dismiss the tenants' application to cancel the 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

- 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..., and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, as it is in the prescribed form, identifies the parties, the rental address and the reason for the tenancy to end. Therefore, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. As the effective date of the notice has passed, I issue an Order enforceable 2 days after service on the tenants.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed 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: April 26, 2022

Residential Tenancy Branch