



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated January 22, 2022 ("Two Month Notice"); and to recover the \$100.00 cost of his Application filing fee.

The Tenant, his former landlord, [P.C.], and his new Landlord, [T.E.], 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 the hearing process. During the hearing the Tenant and the Landlords 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also 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.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 4, 2016, and ran to February 28, 2017, with a monthly (current) rent of \$1,546.00, due on the fourth day of each month. The Parties agreed that the Tenant signed the most recent tenancy agreement with the Landlord, P.C., which tenancy agreement ended on February 28, 2022. They agreed that they did not enter into a new tenancy agreement.

The Parties agreed that the Tenant paid the Landlord a security deposit of \$762.00, and no pet damage deposit. The Landlords agreed that P.C. transferred the Tenant's security deposit to the new Landlord, T.E. as part of the sale of the property.

The Two Month Notice was signed and dated January 22, 2022, it has the rental unit address, it was served by leaving a copy in the mail box or mail slot of the rental unit on January 22, 2022, with an effective vacancy date of April 3, 2022, and 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, [P.C.] explained why he served the Two Month Notice to the Tenant, as follows:

On January 12, 2022 [T.E.] and myself entered into contract of sale. On January

21, all subjects were removed, and [T.E.] issued a buyer's notice for vacant possession. On January 22nd, I issued the Two Month Notice to the Tenants.

The Tenant responded, as follows:

First, the Two Month Notice can only start after the fixed term has completed; it was started in January, when we were 10 or 11 months into it. Another reason was we've been here for five plus years and it is difficult to pick up and leave. And we spoke to [P.C.] last year about giving us the time to find a place, so we could go along our merry way. We felt that it was difficult living here for five years, and should be granted some goodwill for being good tenants for five years. We were hoping for an amiable resolution, because we've been living here for such a long time; and there was a refusal to entertain anything.

After reading the tenancy rules, the Two Month Notice can only start after the tenancy is completed. It was given with a month and a few days left, and no understanding. There are quite a few reasons that we're quite reasonable: we've lived here for five to six years, rents have doubled, and we have to get into a financial position to enter the market.

Two, we were quite tied down in the community in quite a few ways, so we needed to close that properly and get ready to move away. In our emails last year [with P.C.], we said we would prefer to stick around until the school year ends. We have four kids, and it would be disastrous to us to move them to new schools. We weren't in a position to deal with the challenges that arose at being evicted.

I asked the Tenant to confirm what I inferred from his testimony to be that he knew from discussions and emails with [P.C.] in 2021, that the Landlord was considering selling the residential property. The Tenant said:

He mentioned his wish to sell the property, and he was... into a fixed term lease – I understand he bought another property for rental, and he needed the money from this property to cover the other property. All of a sudden it just ended and he wanted us to leave. I said we're in a fixed tenancy, and we can't be kicked out without any humanity or understanding. It quieted down after a little while. When the time came, we started looking and found out what we'd be up against.

I asked the Landlord if he had any comments on the Tenant's testimony, and he said:

I'm not really sure what to comment on. I'll point to my evidence of how and why I submitted the notice to end the tenancy. I don't feel that his comments were evidence to cancel this Two Month Notice and I have indeed sold the property to a person who wants to move in.

I asked about the most recent tenancy agreement, and the Parties agreed that it started on February 28, 2021, and ended on February 28, 2022. Again, the Two Month Notice was served to the Tenant on January 22, 2022, with an effective vacancy date of April 3, 2022, as the next month's payment would have been on April 4, 2022, pursuant to the Parties' tenancy agreement and practice.

I asked the Parties for their last statements before we ended the hearing, and as the Landlord has the burden of proof in this matter, [T.E.] spoke first, saying:

I'll just direct you to what [P.C.] submitted, including a number of pieces of evidence, including the tenancy agreement as originally signed in 2016. That was extended until February 28, 2022. We did purchase this property on the basis that we would be living in the unit. We chose the timeline for the Two Month Notice based on the timeline in the Act, with the intention of moving in and living in the property.

I'll direct you the effective date of the Two Month Notice, which was more than two months after the date it was delivered on January 22nd. It was the day before when rent would be due and owing – April 4, 2022 - and not before the lease specified that the lease would be over. It is enforceable under section 49 of the Act. We knew we had an obligation to act in good faith. That's how we intended to do this. That's how this process all started. The term was that the Tenant would be no longer able to live there.

The Tenant's last statements were as follows:

The main reason for the dispute is there's a housing crisis in the [area], and it is difficult for a family of six to move. And I know the law says two months. But because of the current situation and being that we were good tenants, we are really hoping for a bit of humanity. It's not flip switch change. There is a lot of competition out there to find a place. We tried to squeeze further to accommodate what is happening, it takes adjustment time. When we apply for rental places, people choose other smaller families.

Also, we've had – we both lost our jobs in January - and we're both unemployed, because of the pandemic and various reasons, and so it is even more difficult right now. We can't afford something – we have some EI benefits, but it is very difficult to sign a lease. A Landlord wouldn't want to because of no set income. That's after we submitted the dispute. It wasn't an issue at the time, but now a major issue. We are exploring other ways to fix the situation. My main thing was we just needed a bit more time to change our lives.

That's basically what it was. How can they ... nobody is willing to come to the table to discuss something. I know we have to give up the property. And the notice period should start after a fixed tenancy term completed. Another month or two would give us a breather.

[T.E.] said that he is renting the place they now live and that he has to cover costs of the rental unit and the residential property they just purchased. [T.E.] said:

I had expressed and am willing to negotiate with [the Tenant], but it feels like it's a little bit too late; I'm not sure that we can facilitate now. But I am not expecting to; I'm fully expecting to have further conversation with [the Tenant], while we wait for the Decision.

[T.E.] wrote the following in a letter addressed to the Tenants dated March 28, 2022. This includes:

Dear [Tenants],

We are the buyers of the Property described above. As of April 4, 2022, we will be the new owners of the Property. We were dismayed to hear that you have disputed the eviction notice which the current owners, [P. and D.C.], provided to you in January 2022 after we had removed subjects on our purchase.

We have reviewed your notice of dispute and the information you provided. Most of which we are in no position to comment on. However, we do wish to address one particular item in that notice - we fully intend and plan to live in the Property as our primary residence. We had intended on doing that as of April 5, 2022 (the day after the completion date of our purchase). We had no intention of being your landlord's and we fully intend on living in the Property for the foreseeable future as our home.

One other item of note from your dispute notice is the issue of your children's schooling location. We have inquired with the [A.] School Board via email regarding this issue and were very clearly informed that children attending schools in [A.] are not required to move schools if their family changes residences mid-year. We encourage you to contact the School Board to make your own inquiries. This issue does not seem controversial.

As you can imagine, your dispute of the eviction notice has caused a considerable amount of stress and hardship on us. Currently, we are renting the house which we live in. We have provided notice to our Landlord that we will move out of our current residence as of April 30, 2022. According to your dispute notice, the residential tenancy board hearing is scheduled to be heard on May 10, 2022, a full 10 days after we are scheduled to move out of our current residence.

...

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 (5) of the Act states that a landlord may end a tenancy in respect of a rental unit if the following occurs: first, if the landlord enters into an agreement in good faith to sell the rental unit; and second, if all the conditions on which the sale depends have been satisfied. Further, this subsection requires that 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; or
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Policy Guideline #30, "Fixed Term Tenancies" ("PG #30") states:

A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, which may include use by the purchaser of the property, the landlord must serve a proper Two Month Notice to End Tenancy

for Landlord's Use of Property (form RTB-32) on the tenant. Before a landlord can serve notice for the purchaser's use of the property, the landlord must have an agreement in good faith to sell the property, all conditions of the sale must have been satisfied and the purchaser must ask the landlord, in writing, to give notice to end the tenancy. The effective date of that Notice will be two months from the end of the month in which the Notice was served, but in any case not before the end of the fixed term....

[emphasis added]

Regarding the Tenant's assertion that a landlord may not issue a Two Month Notice before the end of a fixed term, I find that PG #30 clearly states that the effective date of the Two Month Notice must not be before the end of the fixed term tenancy. I find that the Landlords have complied with the Act and PG #30 in serving the Two Month Notice as they did. Further, I find that the Two Month Notice is consistent with section 52, as to form and content.

Accordingly, and based on the evidence before me overall, I find that the Landlords have met the burden of proving the validity of the Two Month Notice on a balance of probabilities. I confirm that the Two Month Notice is valid and enforceable.

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

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 Tenant 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 Tenant 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

Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlords provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application to cancel the Two Month Notice is dismissed without leave to reapply. Given this result, I decline to award the Tenant recovery of the \$100.00 Application filing fee, and I dismiss this claim without leave to reapply. Further, the Tenant's claim to dispute a rent increase from the Landlord is dismissed with 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 Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant 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: May 10, 2022

Residential Tenancy Branch