



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNL**
 LL: OPL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated February 2, 2022 (“2 Month Notice”). The Landlord made one application (“Landlord’s Application”) for an Order of Possession pursuant to the 2 Month Notice.

The Tenant’s advocate (“HM”) and the Landlord attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

HM stated the Tenant served the Tenant’s Notice of Dispute Resolution Proceeding and her evidence (“Tenant’s NDRP Package”) on the Landlord by registered mail on February 25, 2022. HM provided the Canada Post tracking number for service of the Tenant’s NDRP Package on the Landlord. I find the Landlord was served with the Tenant’s NDRP Package pursuant to the provisions of sections 88 and 89 of the Act.

The Landlord stated he served the Landlord’s Notice of Dispute Resolution Proceeding (“Landlord’s NDRP”) by registered mail but he could not recall the date of mailing. HM acknowledged the Tenant received the Landlord’s NDRP. I find the Landlord’s NDRP was served on the Tenant in accordance with section 89 of the Act.

Preliminary Matter – Withdrawal of Tenant’s Application

HM submitted into evidence a signed agreement between the Landlord and Tenant dated May 2, 2022 (“Agreement”) in which the Tenant agreed to withdraw the Tenant’s

Application and to vacate the rental unit by May 31, 2022 and the Landlord agreed to pay the Tenant compensation consisting of one month's rent. With the consent of the Landlord, I dismissed the Tenant's Application without leave to reapply.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's Application and my findings are set out below.

The parties agreed the tenancy commenced on April 1, 2016, on a month-to-month basis, with rent of \$895.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$447.50 by April 7, 2016 and a pet damage deposit of \$447.50 by April 30, 2016. The Landlord stated the Tenant paid the security and pet damage deposits and that he was holding the deposits in trust on behalf of the Tenant.

The Landlord stated the 2 Month Notice was served on the Tenant's door on February 2, 2022. HM acknowledged the Tenant received the 2 Month Notice.

The Landlord stated he served the Tenant with the 2 Month Notice on the basis that the Landlord and his wife would be moving into the rental unit. The Landlord stated he and his wife are living in a two-storey house situated on one acre of land. The Landlord stated that, due to their advancing age, he and his wife are now having problems with the stairs and maintaining the house and grounds. The Landlord stated he and his wife wanted to occupy the rental unit occupied by the Tenant as it is located on the main floor of the rental property. The Landlord stated he was acting in good faith when he served the 2 Month Notice on the Tenant.

HM stated the Tenant was not disputing the intent the good faith of the Landlord to use the rental unit for the Landlord's own use.

Analysis

Subsections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1) In this section:

[...]

"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, and

(b) for the purposes of subsection (4), a family corporation that

(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;

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(3) 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.

- (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
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The Landlord stated he served the 2 Month Notice on the Tenant's door on February 2, 2022. Pursuant to section 90, the Tenant was deemed to have received the 2 Month Notice on February 5, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or February 21, 2022, being the next business day after the expiry of the 15-day dispute period. The records of the Residential Tenancy Branch disclose the Tenant's Application was filed on February 17, 2022. I find the Tenant made her application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

Residential Tenancy Policy Guideline# 2A ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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 motive for ending the tenancy,

and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The Landlord's testimony was credible and compelling. HM stated the Tenant did not dispute the good faith of the Landlord to occupy the rental unit after the tenancy ended. As such, I find the Landlord was acting in good faith when he served the 2 Month Notice on the Tenant.

I find the Landlord has established grounds to end the tenancy pursuant to section 49(3) of the Act on the basis that he intends in good faith to occupy the rental unit.

I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 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.

Section 52 of the Act states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the 2 Month Notice and finds it complies with the form and content requirements of section 52 of the Act. Under section 55 of the Act, when a tenant's

application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an Order of Possession. The effective date of the 2 Month Notice was May 1, 2022. The parties agreed the Tenant is still in possession of the rental unit. However, pursuant to the Agreement, the Tenant has until May 31, 2021 to vacate the rental unit. Pursuant to section 68(2)(a), I order the tenancy ended on May 31, 2021.

Based on the above, I grant the Landlord an Order of Possession effective May 31, 2022. The Landlord is provided with this Order in the above terms and the Landlord must serve the Tenant 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.

Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective May 31, 2022 after service of this Order on the Tenant. This Order must be served by the Landlord on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenant or anyone 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: May 30, 2022

Residential Tenancy Branch