



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55; and
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 9:41 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant’s Notice of Dispute Resolution Proceedings and stated he had no issues with timely service of documents.

The landlord testified that he did not serve the tenant with a copy of the evidence he had uploaded to the Residential Tenancy Branch’s dispute management site, on his understanding that the tenant could access it directly from the site. As the landlord did not serve his evidence upon the tenant in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure, I will not refer to any of his documentary evidence in this decision.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Background and Evidence

The landlord gave the following **undisputed** testimony. The landlord had previously served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use for landlord's use back in June 2021 with the intent of occupying the rental unit himself. The landlord decided not to pursue ending the tenancy and instead decided to sell the rental unit.

The rental unit was sold to a purchaser and the purchaser provided the landlord with a *buyer's notice to seller for vacant possession* ("buyer's notice"). The landlord testified that the document states the purchaser, or a close family member of the buyer intends in good faith to occupy the property. The landlord testified that a copy of this document was served upon the tenant when the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on January 29, 2022. The landlord testified that he effected service by posting the Notice and buyer's notice to the tenant's door on that date.

The landlord called JE as a witness. JE testified that he is the purchaser's real estate agent and was asked to appear as the purchaser's agent for the purposes of this hearing since the purchaser doesn't speak English well. The witness testified that the purchaser's son intends in good faith to occupy the rental unit. The son is just waiting for the tenant to vacate the unit so that he can move in.

Analysis

I deem the tenant served with the landlord's 2 Month Notice to End Tenancy for Landlord's Use on February 1, 2022, three days after January 29th, in accordance with sections 88 and 90 of the *Act*. The tenant filed her application to dispute the notice on February 12, 2022, within the 15 days required under section 49. As the application was filed in time, the tenant's application seeking to have the application heard after the time to dispute the notice has passed is not required.

The landlord sought to end the tenancy pursuant to section 49(5)(c) which allows a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state:

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.

The Residential Tenancy Branch Rules of Procedure state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

This hearing was conducted in the absence of the tenant in accordance with Rule 7.3. Consequently, the tenant did not present any argument to the landlord's testimony. The landlord gave undisputed testimony to satisfy me that he served the tenant with an effective 2 Month Notice to End Tenancy for Landlord's Use, which includes the buyer's notice. I find this notice to end tenancy complies with form and content provisions of section 52.

The landlord has also satisfied me that a close family member of the purchaser, the purchaser's son, intends in good faith to occupy the rental unit. I have no reason to question the landlord's good faith or the purchaser's good faith in ending the tenancy. For this reason, I uphold the 2 Month Notice to End Tenancy for Landlord's Use issued on January 29, 2022. The tenant's application to dispute the notice is dismissed without leave to reapply.

The effective date stated on the notice to end tenancy has passed. The landlord is therefore entitled to an Order of Possession effective two days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 20, 2022

Residential Tenancy Branch