



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 Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, RW and LR, and the Tenant, MJW, and Advocate, SM, attended the hearing at the appointed date and time. Later into the teleconference, former Tenant, TG, called into the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords personally served the Two Month Notice on January 28, 2022. The Tenant confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenant on January 28, 2022 pursuant to Section 88(a) of the Act.

The Tenant testified that she served the Landlords with the Notice of Dispute Resolution Proceeding package and evidence on February 11, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post tracking

number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlords confirmed receipt of the Tenant's NoDRP package and evidence, although missing page two of one document. I find that the Landlords were deemed served with the NoDRP package on February 16, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlords testified that they served the Tenant with their evidence on April 22, 2022 by posting the package on the Tenant's door. The Landlords testified that they took a photo of this service, but the photo was not uploaded into their RTB evidence portal. The Landlords did not provide a proof of service document for service of their evidence. The Tenant denies receipt of the Landlords' evidence and stated she has not seen any of it. The Tenant confirms receipt of the One Month Notice. I find the Landlords' evidence was not served on the Tenant for this hearing and I decline to consider the evidence they uploaded on the RTB website.

The Landlords were asked if they wanted to go forward with the hearing based only on their verbal testimony. The Landlords want to move back into their house and agreed to go forward in the hearing without the evidence package they put together.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlords' Two Month Notice?
2. If the Tenant is unsuccessful, are the Landlords entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on February 1, 2021. The fixed term ended on February 1, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,200.00 payable on the first day of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the Landlords. Due to domestic dysfunction and violence, the Tenant's ex-partner, TG, no longer resides in the residential property.

The reason noted on the Landlords' Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was April 1, 2022.

At the end of the fixed term, the Landlord RW contacted Tenant TG and asked if the Tenants were "*still happy renting month to month after January? And would you like to do post dated cheques again or e transfers.*" Tenant TG replied, "*Yea we are happy month to month. I will write you another years worth of cheques and I'll drop them off to Lucy at the bank tomorrow.*" Tenant MJW said the Landlords accepted the cheques, are cashing them and they were given a year's worth, she maintains this is their agreement that she has one more year in the rental unit.

At present, the Landlords are living in RW's father's house. RW's father was diagnosed with cancer and he moved to be closer to his medical treatments. He has another surgery coming up in June 2022. The Landlords said their goal is to move back into their home, and start their family. The only reason they moved out of their home in the first place was to do renovations in RW's father's trailer. Those renovations are now completed.

The Tenant questions the good faith of the Landlords as she believes that TG bribed the Landlords in getting them evicted. Sometime near the end of January 2022, there was domestic abuse for which TG was criminally charged. The Tenant and TG split up. The Tenant uploaded text streams between TG and RW where TG is telling RW he needs to evict them 'TODAY'.

[Tenant] and I are no longer together. She has taken the house and is going to use the police to over take the agreement by claiming abuse. If she is successful you can't evict her at all some kind of rule she is very familiar with as she has used it several times in the past. It doesn't work at all for the landlord. I'm dead serious now is your chance. Please follow my warning. You can evict me for the damages. Without question. If you act fast. I will cover up too three months of rent between you and I. I don't want you to have an empty house. I have respect for people. [Tenant] and her drug dealing boyfriend do not. They will sell drug our ofnyour house until they have overstayed and trashed your house. I won't back out of what I'm saying. The ... she has lied to police to get me out of there and uses the police to make sure I stay away. Like I said I am so sorry for how abrupt this is. You have a

short window to get out without the ministry protecting a liar. She know the system. Send me the eviction notice ASAP.

Landlord RW thanked TG for the warning, and said, *"I will take this as your notice to end tenancy and write up something up immediately."*

Landlord RW stated he did not go along with TG's text messages. He said they were in a tough situation with his father's cancer and that it was tight living in the two-bedroom trailer. The Landlords always planned to move back into their house and they are seeking an Order of Possession.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

49 ...

(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,*

...

(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] ...*
- (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*
- ...

The Tenant was served with the Two Month Notice on January 28, 2022. I find that the Landlords' Two Month Notice complied with the form and content requirements of Section 52 of the Act which state:

- 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.*

The Two Month Notice stated the landlord or the landlord's spouse will occupy the unit. The Landlords testified that their goal is to move back into their home, and start their family. The only reason they moved out of their home in the first place was to do renovations in Landlord RW's father's trailer. Those renovations are now completed. I find the grounds for ending this tenancy are because the Landlords will occupy the rental unit.

The Tenant filed for dispute resolution on February 2, 2022 which was well before the 15 day limit to apply. The Tenant also made a claim that she did not believe the Landlords were acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for

Occupancy by Landlord, Purchaser or Close Family Member, assists parties understand issues that are likely to be relevant in this regard.

B. Good Faith

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

The Tenant alleges that the Landlords were bribed by her ex-partner to have her family evicted. The Tenant also submitted that the Landlords accepted their year's worth of rental cheques. Landlord RW did not affirm or deny that the Tenant's ex-partner attempted to bribe him. Instead, Landlord RW stated he did not go along with TG's text messages. The bigger issues in the Landlords' lives were that Landlord RW's father was dealing with a cancer diagnosis, the Landlords had completed renovations in Landlord RW's father's trailer, and now living in the two bedroom trailer was too tight for him and his wife. I do not find that just because the Landlords accepted a year's worth of rent cheques, that this confirms the Tenant has at least another year in the rental unit. Landlord RW specifically asked TG when he was still residing in the rental unit if they were still happy renting on a month to month basis. The Landlords testified that they plan to begin their family and want to return living in their home. I find the Landlords have the good faith intention of doing what they said they plan to do. I believe that they do not intend to defraud or deceive the Tenant and they do not have an ulterior motive. I find on a balance of probabilities that the Landlords meet the good faith requirement that they intend to move into their residential property and occupy it, and

consequently I dismiss the Tenant's application to cancel the Two Month Notice without leave to re-apply.

As the Tenant was not successful in her application, I must now consider if the Landlords are entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

Order of possession for the landlord

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I find that the Two Month Notice submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act and I uphold the Landlords' Two Month Notice. I grant an Order of Possession to the Landlords pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant.

As I uphold the Landlords' Two Month Notice, I caution the Landlords to regard Section 51 of the Act regarding: **Tenant's compensation**, which comes into play when the Landlords do not fulfil the stated purpose in their notice.

Conclusion

The Landlords are granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective two (2) days after service on the Tenant. The Landlords must

serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 28, 2022

Residential Tenancy Branch