



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH ISLAND PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on June 27, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

Both parties were present at the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed that the tenancy ended around a month ago, when the Tenants vacated the rental unit. Given the tenancy is over, I find the Tenants' application to cancel the Notice is moot, and is dismissed, without leave.

Preliminary Matters

During the hearing, the Landlord stated it was unclear as to why the Tenants had their legal counsel attending this hearing, given the tenancy was already over. However, the Tenants' counsel stated that he was present to request a summons for the production of certain documents relating to the Landlord's "good faith" intentions. The Tenants' counsel pointed to their letter, dated May 25, 2022, outlining their request for this summons as part of this proceeding. The letter specifies that the Tenants are seeking a

Director's summons for the production of documents relating to assessing the Landlord's "good faith" intentions to occupy the rental unit. These documents pertain to potential construction activity leading up to the end of the tenancy. The Tenants are also seeking these documents as part of their potential future claim for monetary compensation pursuant to section 51(2) of the Act.

Section 76 of the Residential Tenancy Act states:

- (1) On the request of a party or on the director's own initiative, the director may issue a summons requiring a person*
 - (a) to attend a hearing under this Division and give evidence, or*
 - (b) to produce before the director documents or any other thing relating to the subject matter of the dispute.*
- (2) A party who requests that a summons be issued under subsection (1) must provide conduct money for the witness in accordance with the rules of procedure established under section 9(3) [director's responsibilities].*
- (3) If a person named in and served with a summons under subsection (1) does not comply with the summons, the person is liable, on application to the Supreme Court, to be committed for contempt as if in breach of a judgment or an order of the Supreme Court.*

As stated above, this hearing was scheduled to discuss the merits of the Notice, and whether or not the Landlord is entitled to an Order of Possession, based off the Notice. This issue is now moot. I note the central issue in the Tenants' written request for summons for this proceeding is to obtain documents in order to assess the Landlord's "good faith" intentions. The issue of "good faith" with respect to the Notice is relevant to determining whether or not the Landlord is entitled to an Order of Possession, pursuant to section 49 of the Act, based off the Notice. However, determining "good faith" intentions under section 49 of the Act is not relevant to compensation under section 51(2) of the Act; it is only relevant when determining whether or not the Landlord is entitled to an Order of Possession.

Section 76(1)(B) of the Act authorizes me to order the production of documents relating to the subject matter of this application. However, given the tenancy is over, it is not necessary to consider the Landlord's good faith intentions, and the merits of the Notice. At this time, I decline to issue a summons for the Landlord to produce documents as this appears to be largely requested by the Tenants, as per their written request, to assess "good faith" intentions, which is now moot.

The Tenants are at liberty to apply for monetary compensation pursuant to section 51(2) of the Act in the future. However, their application may be considered premature if they

have not given the Landlord sufficient time to follow through with the grounds indicated on the Notice.

The Tenants are also at liberty to re-request a summons to support their future claim for monetary compensation, pursuant to section 76 of the Act. However, they should make this request alongside that application, with a clear explanation as to why it is necessary, appropriate and relevant for the issues being sought on that application. Any request for summons must be considered within the context of the current application being sought.

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: June 27, 2022

Residential Tenancy Branch