



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated February 27, 2022; to suspend or restrict the Landlord's right to enter; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, the Landlord, and an agent for the Landlord, K.K. ("Agent"), 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 it. During the hearing the Tenants and the Landlord 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 Tenants provided the Parties' email addresses in the Application, and the Parties confirmed these addresses 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 they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Before the Parties testified, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the Application, the most urgent of which is the claim to set aside the Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenants' other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2018, with a current monthly rent of \$2,900.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,500.00, and no pet damage deposit. The Landlord confirmed that he still holds the security deposit in full.

The Tenants submitted a copy of the Two Month Notice, and the Parties agreed that it contains the following details. The Two Month Notice was signed and dated February 27, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door and by emailing it to the Tenants on February 27, 2022. The Two Month Notice has an effective vacancy date of April 30, 2022, which is automatically corrected by the Act to be May 31, 2022. The Two Month Notice was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member (the Landlord was selected in this situation).

As the burden of proof in this matter is on the Landlord to prove the validity of the Two Month Notice, I started by asking the Landlord why I should confirm it, rather than cancel it as the Tenants have requested. The Agent said:

My father and mother and adult brother, along with his Caregiver currently reside at [address], not too far away from rental premises. My adult brother is almost 37, and he is a special needs individual and has been all of his life. He requires around the clock staffing. He has been residing at home with my parents. He is

not physically disabled, and is about a 210 pound, 5 foot 11 inch man who has very, very challenging behaviours, and also is physical. This is his condition. So, there are a lot of angry outbursts – yelling - it is a very difficult situation.

My parents have persevered over the years, but my father's health has deteriorated, especially in recent months. The evidence we presented summarizes what I'm telling you, as well as a doctor's note. My father's long time physician wrote a note – he is who oversees my father's general care, and is in touch with his specialist. He has had a heart attack; he has a pace maker. He is in a fragile physical health. This can be confounded by any stressors, be they mental or physical.

So, him residing in the same residence as my brother is not sustainable. It's in his best interest that he lives in a different residence. He owns this residence. He will reside there and my brother will continue to reside with his Caregiver.

My brother is autistic; he yells; there are police records of phone calls to the police department. He does not allow my mother or father to have peaceful enjoyment of their lives. He has extreme. . . - they are not allowed to watch television in their own home. This is not sustainable, because there is a health crisis. So, my father needs to have an alternative residence. His own home [the rental unit] is suitable in location, size, and the fact that he does not have to be out of pocket. So, he would like to setup his personal residence here. We are confused as to why this is being challenged.

In their response, the Tenants commented on the rent amount that they pay, that they had to clean up the residential property when they moved in, and that the Landlord imposed an illegal rent increase. However, I do not find these comments to be relevant to their Application. The Tenants also said the following:

In my opinion on this matter, [the Landlord] lives in a multi-million dollar mansion with his wife and son only. His son's – I sympathize with his son's situation.

They've been threatening us, and making our life a living hell just to move out. They came up with a solution: he wants to come live here by himself. He has several other rental properties closer to ... I asked why you're not giving the downstairs tenant notice, and he said, 'Because he's my worker'.

We have been living here for four years; we disagreed for another \$900.00

increase that they were asking, and then they come up with this. I said you have to give me written notice; he has come up with this solution. He has not announced his primary residence to nobody that he was going to live here.

We had a problem with him putting in this illegal suite - doesn't meet city code. Every time we say something he says you can move out. And now their solution is to leave his wife and child and to live here?

As you know the rental situation not very good here. One week before we are trying to locate something, [the Agent] said if I have to spend \$10,000.00, \$20,000.00 - I want you out of here.

He made our life not very easy, and I have spent lots of money on appliances. I know he's not going to live here by himself. I don't think he's coming to live here.

My request is for a reasonable amount of time, so I can find a place to move out of this place. We have tried to do that. I have been here for four years - I have given \$140,000.00 in rent - no questions. I can live here for a few more months. We are relocating to another city next year. . . but at that point, he said, 'Nope, I want you out of my place'.

The Tenant, D.K., said:

My mother has recently passed away. I have to go take care of my . . . my husband retires next year and it is not financially reasonable to move in three months and again next year. Last time it cost \$1,800.00 for a moving truck. It's just a bad timing for us. He was here last week trying to – [the Agent] discussed – let us stay until the time we are moving. That would be nice.

The Landlord submitted a note he obtained from his physician, which states:

To Whom It May Concern

June 8, 2022

[The Landlord] suffers from a serious medical condition that requires him to occupy and live in his home on [rental unit address] as soon as possible.

Signature [doctor's signature]
Dr. [J. S.-C.]

The Agent replied, as follows:

What I described before – the current situation that we have - my father intends and needs to come to this residence. They do not live in a mansion with multiple rooms – it's a house from 1960s, so. . . . Anyhow, this home is in a state of disrepair and it will need to be better maintained, fixed up as soon as possible. That's the first thing my father will have to do. It has been a long time that they have been discussing about it.

The Tenants want more time to find a place, but we're talking about health. How long does my father have until a physical attack or the stress causes his death? I think that trumps their situation. The Two Month Notice would have been an April vacancy - we're almost at the end of June.

[Tenant], if you have put any appliances in that house, you are welcome to take them with you.

The process provides for a Two Month Notice to vacate to be sincere. It has repercussions if it is not followed.

The Tenants indicated that they want six more months before they have to vacate the residential property.

The Agent said;

I understand the Tenants' predicament, but everyone has these kinds of issues in their lives. We can lay out our issues – it is not my problem what is their issues. I sympathize, but having said that six months is not reasonable for us. We are also in an urgent situation. Neither [P.K.], his wife, nor yourself understand what's going on. We need to get my father in another residence as soon as possible - say by the end of July.

The Tenants responded:

First, I have to leave again on June 30th for this memorial and to help my father, and I will be. . .

I know we have to obey the law, and we haven't done anything against the law in our life. We have been looking very actively. I know [the Landlord] needs to – but

also, I know he owns a rental building, as well as another house, as well as the suite downstairs. They don't have to go, so I was trying to prove a point. This is not the only place they can move. We need a little more reasonable time. You decide, Ms. Arbitrator.

In their last statements before the hearing ended the Parties said the following, starting with the Agent:

Just reiterating that we need to prepare this residence for my father as soon as possible, and that is our only position. His health is at stake, and his residence is not amenable.

The Tenants said:

Again, emphasizing it is important for us to stay; we don't want to cause anything to happen for [the Landlord], but he has been dealing with this for a long time, and basically, we also need to find ourselves again a suitable place to situate my family and myself. We need a little bit of time. I know their position and my position is I'm asking for reasonable time from the court, so I can move out. And also, I've been looking and knocking on every door to find a place, and I haven't been successful yet, but maybe by a couple of months I would have time to look at more places for lease. That normally happens, but I will leave it to the [Tribunal] to decide, and we will obey the law.

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 of the Act states that 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.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

[emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that both Parties' testimony in the hearing indicates that the Landlord needs to move into the rental unit for the protection of his health. It is consistent with common sense and ordinary human experience to infer that under normal circumstances, he would rather continue living in his primary residence with his family; however, I find that the circumstances with his family undermine this as a possibility.

I find that the Two Month Notice was served to the Tenants on March 1, 2022, three days after it was attached to the rental unit door and emailed to the Tenants; as such, I find that the Tenants have already had three months to search for another residence.

I appreciate the difficulties that this poses for the Tenants; however, as the Agent said, everyone has difficulties of some kind in life, and the Landlord and his family must take actions as best they can to resolve their difficulties for the sake of the Landlord's health.

Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord 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 Tenants are overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenants.

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 Tenants 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, as we reviewed in the hearing, in addition to the one month's compensation due to the Tenants under section 51 (1), the Tenants are potentially eligible for another remedy. Pursuant to section 51 (2), if the Landlord has not taken steps 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 Tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find that this penalty would discourage a landlord from evicting a tenant without a sincere, good faith cause, pursuant to section 49 of the Act.

Conclusion

The Tenants are unsuccessful in their Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit **effective two days after service of this Order** on the Tenants, since they are now overholding in the rental unit. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. **Should the Tenants 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 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 22, 2022

Residential Tenancy Branch