



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated May 3, 2022; for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated April 19, 2022; and for an Order for the Landlord to Comply with the Act or tenancy agreement.

The Tenant, C.K., the Landlord, W.Y.C., and a co-Landlord, H.Y.H., 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 Tenant and the Landlords 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 Tenant provided the Parties' email addresses in the Application, and they 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 pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2021, and was to run to May 31, 2022, and then operate on a month-to-month or periodic basis. They agreed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$3,480.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,740.00, and no pet damage deposit.

The Two Month Notice was signed and dated April 19, 2022, it has the rental unit address, it was served by email and by attaching a copy to the rental unit door on April 19, 2022, with an effective vacancy date of June 30, 2022, and it was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member (the Landlord in this case).

The 10 Day Notice was signed and dated May 3, 2022, it has the rental unit address, it was served by posting it on the rental unit door on May 3, 2022, with an effective vacancy date of May 16, 2022, and it was served on the grounds that the Tenant failed to pay rent when it was due on May 1, 2022.

In the hearing, the Landlord said he served the 10 Day Notice, "...simply because [the Tenant] didn't pay the rent for May, and she hasn't paid for June, either, so she is two months late for the rental fee."

The Tenant replied:

I didn't pay because [the Landlord] was sending so many texts, and notices, without any consideration to my family to the point that they are asking me to move, move, move, with any contemplation as to how expensive it is to move. I have two kids in university, but they are attacking me with non stop texts. I

stopped paying because I didn't know what to do. I have rights, and I don't think Canadian families should be threatened in this way.

They are sending me many, many messages that I have to move. Rent is for a year and he requested of me to move to the end of April. This is a whole house with four bedrooms. Movers charged me \$4,000.00. This is a long term rent - I was not ready for that. I didn't pay because the situation is really confusing. Like [the Landlord] texting me to move on May 31 you have one month... all the messages, and the way they were contacting me was so confusing. That is why I didn't pay the rent.

I went personally to the RTB and I gave them documents to prove what I was saying. And the text messages .. should be respected – they asked me to move one month before the lease ends. Since February 15, all of a sudden you need to move.

The Landlord said:

From all the documents I received for registered mail, we have never threatened her. We begged her and explained our situation to her – the reason we are asking her to leave. We never threatened her or intimidated her in any form.

From all docs from her registered mail, I don't see any copies of the so called threatening messages. We explained in the nicest possible way. We were very careful with our tone and words – it's not that we don't want her to stay - but that we have to move back in.

We are actually begging her to move. I can send my text message begging her and explaining and I was really, really - I am really careful with my words. We have a 10 year-old daughter, and we have no place to stay after June 30. A mother and ...I begged her, please. I followed the rules and gave her enough time to leave. She's not paying the rent for two months. That's a really difficult time financially. I'm just begging her to follow the rules. We are not threatening her, no not at all. I was so polite to her.

Just to add a little information. We asked her to move due to the situation we're encountering, and we offered her to move based on the Two Month Notice - we can offer her to waive her rental fee for May and June. We made that offer, but instead, she didn't comply – agree to move. She didn't pay, that's why the 10

Day Notice was served.

Just because she's not moving at the end of June, I need to find a warehouse for my furniture. Me and my daughter have to figure out where we can stay. This is really suffering to me.

The Tenant replied:

You can't believe when this couple change their mind all the time The wife talks to me to give free May and June, but you move at the end of June. And suddenly the 10 Day Notice. I'm a single parent and I have 7 days of working a week, and these people own a house of \$3 million. They will consider it and then ... how can I tell this family that has consideration of me. I have to work 7 days a week, I don't have the luxury to move every single year and change my address.

The Landlord said:

The number one thing is the timeline: we served the 10 Day Notice because she didn't pay the rent for May, but *then* we offered her if she moves out at the end of June . . .

I'm not a business man and I manage a charity foundation with little wage. The house we're currently living in, we don't own it, we're a tenant. That's why my daughter and [H.Y.H.] will have no place to live.

What I'm trying to say is that life is not easy for everyone. We really, really followed the rules. No one's life is easy. We are trying our best to follow the rules. We even offered two months free rent. I'm trying my best to give her the best offer. To help her to help us.

I asked the Landlord for more detail as to why they served the Tenant with the Two Month Notice. They said:

We have stated that previously that simply due to the fact that we need to move out of our current rental unit. I will be staying with my brother; [H.Y.H.] and my daughter will move back to the property. But on June 30th they will have no place to live.

The Tenant said:

I don't think that's the reason. The reason is that the rent is sky-rocketing. The rental unit is \$3,480.00. Similar properties rent it out at higher rates. The way they dress and the car they drive.... The Realtor said that they bought the property and something went wrong; no one is homeless if you pay rent. If I ask for 4 or 5 months to save money. They say that they are getting kicked out. There are legal regulations.

It is confusing if you can stay, and then sticking documents onto my door. I explained to [W.Y.C.] that I wasn't ready to move. I need extra money ... he didn't understand me, and he said you need to move. I said I know this is not my property. I just requested that I need time to save more money and not work for a week. This was not in my budget to spend and extra \$1,000.00. I need to afford movers. And this furniture – my furniture is large. Four guys have to move everything. It's not that I want to leave here.

I was searching, I went to places nearby, so I don't have to travel. I had meetings with different realtors, but everything similar goes from \$5,000.00 and up. I asked another tenant that it's difficult to rent a house, unless you give months of rent. New houses, old houses, and anything that is similar to this price is very small and won't fit my stuff. I drive all around trying to check places. I don't plan to take advantage of everyone. I am checking all over [this city, that city], . . .everything is extremely high compared to this.

The Landlords said:

We understand completely the difficulty she is facing, that is why we offered her, after serving the 10 Day Notice, we said, 'that's okay, we can waive you rental fee for two months'. We went online to look for possible units and sent it to her, as a gesture to feel whatever she's going through, because that is exactly what [H.Y.H.]and my daughter is going through. That is not a small amount of money and a gesture, I hope it will help.

In their last statements before I ended the hearing, the Parties said as follows: First, the Landlords said:

Number one is the timeline really does matter. We make sure we follow the Act and Regulation. We asked her according to the bylaws; we served the notices properly. We were always, always polite, and considerate. We never threatened her or forced her. We offered her the best of our capability to assist her situation.

I can't see my daughter and my partner to have no shelter is very difficult

I was staying with my friend, but this is really, really difficult to me, because I don't want to make myself really fatigued. It's impossible for me to sleep on the street. I will try to find a place to stay, but I really wish I had the .. to this moment, I have no idea where I will stay. I will try to figure this out and find a place to stay this week. If it will be another week, I wish I could have my property back as soon as possible. We have offered all we can offer.

In her last statement, the Tenant said:

As I said, I was not ready for this move too soon. And second, if I say, I borrow money from they bank and move out. I cannot move too soon, because moving is expensive. I don't have that money to afford movers. I can borrow money from the bank and from my friends. I was not ready to move this soon.

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 the Landlords have provided a reasonable explanation as to why they need to take back the residential property for their own use. 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, as the Tenant has not paid rent this month, and as the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

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 Tenant 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, in addition to the one month's compensation due to the Tenant under section 51 (2), if steps have not been taken 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 Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As I have ended the tenancy pursuant to the Two Month Notice, I find it unnecessary to consider the validity of the 10 Day Notice. The Tenant's Application is dismissed wholly without leave to reapply, pursuant to sections 49 and 62 of the Act.

Conclusion

The Tenant is unsuccessful in her 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 an **Order of Possession** for the rental unit to

the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served 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.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 28, 2022

Residential Tenancy Branch