



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 26, 2022 (2 Month Notice) and to recover the cost of the filing fee.

The tenant and their spouse, LC (spouse) and the landlord attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find there were no service issues to address.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, should the tenant recover the cost of the filing fee under the Act?

Background and Evidence

A copy of the 2 Month Notice was submitted in evidence. The 2 Month Notice is dated February 26, 2022 and has an effective vacancy date of June 1, 2022. The reason stated on the 2 Month Notice indicates the following:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☐ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☒ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

Purchaser Information: (complete only if issuing this notice to a purchaser)

first and middle name

The tenant also provided the following document, which reads in part as follows:

TENANT OCCUPIED PROPERTY - BUYERS NOTICE TO SELLER FOR VACANT POSSESSION

TO: Lorna Jean McLaren (the "Seller(s)")

PROPERTY: 2079 Pandosy Street - Main House only

WHEREAS:

A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated Feb 14, 2022 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").

B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.

C. The Property is currently rented to tenant(s).

D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the Residential Tenancy Act), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property extensively renovate the property.

NOW THEREFORE in accordance with Section 49 of the Residential Tenancy Act, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the Residential Tenancy Act terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on June 1st, 2022.

For the purpose of giving the Tenant Notice under Section 49 of the Residential Tenancy Act, the Buyer(s) address is: 498 St. George St. New Westminster BC V3L 1C2 and the Buyer(s) hereby consent to the Seller(s) including the Buyer(s) name(s) and such address on the Tenant Notice for the purpose of Section 49(7) of the Residential Tenancy Act.

The landlord confirmed that under section D above, where the purchaser crossed out the words “occupy the Property” and wrote “extensively renovate the property” worried the landlord prior to issuing the 2 Month Notice.

The parties confirmed that as of the date of the hearing, the landlord has since sold the property and the purchaser has not issued a new Notice to End Tenancy yet.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice issued by landlord – Section 52 of the Act applies in this case and states:

Form and content of notice to end tenancy

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.**
[emphasis added]

In the matter before me, I find the 2 Month Notice was the incorrect notice to end the tenancy as the purchaser crossed out the words “occupy the Property” and instead wrote the words, “extensively renovate the property”, which I find is a fatal flaw and for which makes the 2 Month Notice null and void. I have reached this finding as the correct process for ending a tenancy for extensively renovating the property would be the purchaser applying for an order of possession pursuant to section 49.2 of the Act, which applies and states:

Director's orders: renovations or repairs

49.2 (1) Subject to section 51.4 [*tenant's compensation: section 49.2 order*], a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
- (b) the renovations or repairs require the rental unit to be vacant;
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

(2) In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

(4) **An order granted under this section must have an effective date that is**

- (a) not earlier than 4 months after the date the order is made,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

[emphasis added]

The above process is no longer available through the issuance of a 4 Month Notice but rather an application for an order of possession based on the process described above. If the landlord is not successful in their application, an order of possession would not be granted, and the tenancy would continue.

As a result of the above, the 2 Month Notice is **cancelled** and is of **no force or effect** due to what I find was the purchaser attempting to use a 2 Month Notice to end the tenancy for renovation purposes contrary to section 49.2 of the Act, which sets out the correct process.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. This order is made pursuant to section 62(3) of the Act.

Conclusion

The 2 Month Notice dated February 26, 2022 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The purchaser must comply with section 49.2 of the Act if they attempt to end the tenancy for renovation purposes.

This decision will be sent to both parties.

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: July 6, 2022

Residential Tenancy Branch