



Dispute Resolution Services

Page: 1

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 Landlord's 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 Landlord and Tenant attended the hearing at the appointed date and time. 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.

Both parties acknowledged receipt of the Landlord's Two Month Notice on February 18, 2022, the Tenant's application for dispute resolution and all evidentiary packages. Pursuant to Sections 88 and 89 of the Act, I find that both parties were duly served with all documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord 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 November 15, 2020. The fixed term ended on November 14, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the child of the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was May 1, 2022.

The Landlord's son testified that he was laid off from his work on December 31, 2021. He stated he cannot afford to live where he and his family are staying, and his father and he considered moving him into the rental unit. The Landlord's son stated that his daughter began daycare in the same area as the rental unit in October 2021. The Landlord's son maintained that his father is trying to help him, and the son and his family intend to move into the rental unit.

The Tenant does not believe that the Landlord's son is telling the truth. She said the Landlord is a 'serial owner' and that he owns three units in the same building. The Tenant believes that the Landlord is just using this as an excuse to evict her. The Tenant states that the Landlord's son is trying to portray himself as struggling, but by displacing her, it is unfair.

The Tenant stated when they were last looking to move, the representative who was showing this rental unit said the Landlord needed long-term, stable tenants. The Tenant said she needs this rental unit, they live in a central area, and it works well with her school and disability.

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 for this matter. It states:

Landlord's notice: landlord's use of property

49 (1) *In this section:*

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or*
- (b) the parent or child of that individual's spouse;*

...

(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,*
 - (ii) 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*
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*

...

(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] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (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 February 18, 2022. I find the Two Month Notice complied with the form and content requirements specified in Section 52 of the Act. The Tenant applied for dispute resolution on March 2, 2022 which was, I find, within the 15 days after the date the Tenant received the Two Month Notice.

The Tenant made a claim that she did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to 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 Landlord's son testified that since losing his job, finances have been tight. He stated his father is trying to help him and his family, and they have the honest intention to move into the rental unit. Neither the Tenant's disbelief about this assertion nor the description of the Landlord's son's character as feigning hardships assists me in finding on a balance of probabilities that the Landlord has an ulterior purpose. I find that the Landlord meets the good faith requirement that his son will be moving into the rental property, and consequently I dismiss the Tenant's application to cancel the Two Month Notice.

As the Tenant was not successful in her application, I must now consider if the Landlord is entitled to an Order of Possession. Section 55 states:

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 to the landlord an order of possession of the rental unit if*
- (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 Section 52 of the Act and I uphold the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective on July 31, 2022 at 1:00 p.m.

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

As the Tenant was unsuccessful in her claim, she is not entitled to recovery of the application filing fee.

As requested by the parties, they may wish to call an Information Officer at the RTB about any outstanding questions they may have. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 250-387-1602 / 1-800-665-8779

Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective at 1:00 p.m. on July 31, 2022. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 06, 2022

Residential Tenancy Branch