



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks an order to cancel a Two Month Notice to End Tenancy for Landlord's Use dated March 19, 2022 ("2 Month Notice") pursuant to section 49 of the Act.

The Tenant and one of the two Landlords ("MR") attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution on the Landlords in-person on April 7, 2022. MR acknowledged the Landlords received the NDRP from the Tenant. I find the NDRP was served on the Landlords pursuant to section 89 of the Act.

MR stated the Landlords did not serve any evidence on the Tenant.

Preliminary Matter – Service of Tenant's Evidence on the Landlords

The Tenant stated that, although she submitted her evidence consisting of the tenancy agreement and the 2 Month Notice to the Residential Tenancy Branch, she did not serve that evidence on the Landlords. MR confirmed the Landlords have copies of the 2 Month Notice and the tenancy agreement. Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

The Tenant did not serve her evidence in compliance with Rule 3.1. However, MR stated the Landlords already have copies of the tenancy agreement and 10 Day Notice. As such, I accepted the tenancy agreement and 2 Month Notice into evidence for the hearing.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If the 2 Month Notice is not cancelled, are the Landlords entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy agreement commenced on August 1, 2019, with a fixed term ending August 1, 2024, with rent of \$884.00. The parties agreed the rent is now \$903.00 per month. The Tenant was required to pay a security deposit of \$425.00 and a pet damage deposit of \$200.00 by August 1, 2019. MR acknowledged the Tenant paid the security and pet damage deposits and stated the Landlords were holding the deposits in trust for the Tenant. MR stated the Tenant is up to date paying the rent.

MR stated the 2 Month Notice was served on the Tenant in-person on March 29, 2022. The Tenant acknowledged receiving the 2 Month Notice. The 2 Month Notice states the effective date for move-out is June 1, 2022. MR stated the Landlords are ending the tenancy so that their daughter may move in and occupy the rental unit. MR stated that the Landlords' daughter will be homeless if the Tenant is not required to vacate the rental unit,

The Tenant stated she has not entered into a mutual agreement with the Landlords to vacate the rental unit before the end of the fixed term of the tenancy agreement on August 1, 2024.

Analysis

Subsections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1) In this section:

[...]

"landlord" means

(a) for the purposes of subsection (3), an individual who

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

[...]

- (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
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

[emphasis in italics added]

MR stated the Landlords served the 2 Month Notice on the Tenant in-person on March 29, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or April 13, 2022. The records of the Residential Tenancy Branch disclose the Application was filed on March 30, 2022. I find the Tenant made her application to dispute the 2 Month Notice within the 15-day

dispute period required by section 49(8)(a) of the Act.

The parties agreed the tenancy agreement states the tenancy has a fixed term ending August 1, 2024. Pursuant to the provisions of 49(2)(a)(iii), the effective date of a Two Month Notice must not be earlier than the date specified as the end of the tenancy in the tenancy agreement. The Tenant stated she has not entered into a mutual agreement with the Landlord to vacate the rental unit before the effective date on August 1, 2024. MR did not dispute the tenancy agreement states the tenancy is for a fixed term ending August 1, 2024.

Section 53 of the Act provides that

- 53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) *If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.*
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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
 - (a) that complies with the required notice period, or
 - (b) if the landlord gives a longer notice period, that complies with that longer notice period.

[emphasis in italics added]

The effective date stated in the 2 Month Notice is earlier than the earliest date permitted under section 49(2)(a)(iii) of the Act. As such, pursuant to section 43(2) of the Act, the effective date of the 2 Month Notice is deemed to be August 1, 2024, being the earliest date that complies with section 49(2) of the Act.

Section 49 (7) of the Act requires the 2 Month Notice to comply with section 52 of the Act. Section 52 of the Act states:

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 in italics added]

I have reviewed the 2 Month Notice and find that it was made on a Form RTO-3 dated December 2003. I find the form given by the Landlord to the Tenant to end the tenancy for landlord's own use is not in the currently approved form on Form RTB-32 which is dated March 22, 2021. As the Landlord did not serve the Tenant with an approved Form RTB-32 as required by section 52(e) of the Act, I find the 2 Month Notice is not effective. As such, I find the Application is successful and I order the 2 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

Conclusion

The 2 Month Notice is cancelled. The tenancy continues until it is ended in accordance with the provisions of the Act.

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: July 24, 2022

Residential Tenancy Branch