



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNL

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use dated March 1, 2022 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlord and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The parties did not raise any issues with respect to the service of documents for this hearing.

Issues to be Decided

1. Are the Tenants entitled to cancel the Two Month Notice?
2. If the Tenants are unsuccessful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

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

The rental unit is a cabin located on the Landlord's property. The tenancy commenced on May 15, 2020 and is month-to-month. Rent is \$900.00, due on the first day of each month. The Tenants paid a security deposit of \$450.00 which is held by the Landlord. There is no written tenancy agreement between the parties.

The Landlord stated he is 68 years old and not in good health. The Landlord testified he acquired sole title to the property in February 2021, after buying out his daughter. The Landlord confirmed he resides in a trailer on the same property.

The Landlord stated he wanted to move into the rental unit to "redo the place". The Landlord testified the rental unit needs repairs such as new drywall, new kitchen counters, and re-painting. The Landlord estimated that the renovations will cost approximately "\$15,000.00 to \$20,000.00". The Landlord stated he had put the entire property up for sale, but had "lost two sales" because of the condition of the rental unit. The Landlord confirmed the sale would have to be for the entire property, including the rental unit (cabin) and the Landlord's trailer. The Landlord stated that potential buyers think it will cost too much to fix the rental unit, and that the bank says the rental unit is not rentable.

The Landlord testified he wanted to sell the property as he is losing money and not able to move into the rental unit. The Landlord stated he does not want to rent out the rental unit or have another rental anymore.

A copy of the Two Month Notice has been submitted into evidence. The Two Month Notice is dated March 1, 2022 and has an effective date of May 1, 2022. The Two Month Notice is signed by the Landlord.

The Landlord acknowledged that the parties had previous dispute resolution applications in which he was not successful. The file numbers for those applications are referenced on the cover page of this decision. The Landlord explained he had been under lots of strain, had a major stroke, and could not get the paperwork done properly.

The Tenants confirmed they found the Two Month Notice posted to their door on March 1, 2022. I find the Tenants to have been served with the Two Month Notice in accordance with section 88(g) of the Act on March 1, 2022.

The Tenants testified that they were told the rental unit would be a “long-term rental”, and that the Tenants could stay as long as they needed.

The Landlord denied that the rental was long-term as it is month-to-month rather than for a fixed term.

The parties described having other issues between them, including late payment of rent, smoking, harassment, and assault. I note that these other issues are not relevant for the purpose of this application.

Analysis

1. Are the Tenants entitled to cancel the Two Month Notice?

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which 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.

In this case, I find the Two Month Notice complies with the requirements set out in section 52 of the Act. I note the effective date of the Two Month Notice should be May 31, 2022 at the earliest in order to comply with section 49(2)(a) of the Act. I find that pursuant to section 53(2) of the Act, the effective date of the Two Month Notice is deemed to be May 31, 2022, instead of May 1, 2022.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. I have found that the Tenants received the Two Month Notice on March 1, 2022. Therefore, the Tenants had until March 16, 2022 to dispute the Two Month Notice. Records indicate the Tenants submitted their application on March 14, 2022. I find the Tenants made their application within the 15-day dispute period required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to justify, on a balance of probabilities, the reasons set out in the notice.

I find it important to emphasize to the Landlord that the reason for ending the tenancy given on the Two Month Notice is that the rental unit will be occupied by the Landlord (or a spouse), and that the burden of proof is on the Landlord to justify why the Two Month Notice was served.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member ("Policy Guideline 2A") states that to "occupy" under section 49 of the Act means "to occupy for a residential purpose." The result is that a landlord can end a tenancy under section 49(3) of the Act if the landlord "intend[s] in good faith to use the rental unit as living accommodation or as part of their living space" (emphasis added).

Police Guideline 2A further states that other definitions of "occupy" such as "to hold and keep for use (for example, to hold in vacant possession) are inconsistent with the intent of section 49" (emphasis added).

In *Schuld v. Niu*, 2019 BCSC 949, the Supreme Court of British Columbia found that to "occupy" under section 49(3) of the Act means "the Landlord intends to occupy the rental unit as a residence for his own purposes", but does not include a scenario in which the landlord intends to demolish the rental unit.

When reviewing the Landlord's testimony, it is clear to me that the Landlord's intention for reclaiming the rental unit is to renovate the rental unit, rather than to occupy the rental unit for a residential purpose. I find that the Landlord resides in his own trailer on the property. The Landlord has not provided evidence to suggest why he may need to use both the trailer and the rental unit as living accommodation. I am satisfied, based on

the Landlord's own evidence, that his intention for issuing the Two Month Notice is to renovate the rental unit, and then sell the property.

In my view, this means that the Landlord should have applied for an order to end the tenancy for renovations or repairs under section 49.2 of the Act, rather than issue a notice to end tenancy for landlord's use under section 49(3).

The requirements for ending a tenancy for renovations or repairs under section 49.2 are quite different from those for ending a tenancy for the landlord's use of the rental unit under section 49(3).

For reference, section 49.2 of the Act 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)

I note that I do not find the Landlord to lack good faith when stating his intentions. I am satisfied that the Landlord intends to renovate the rental unit so that he may sell the entire property. However, I conclude that the Landlord has chosen to issue an incorrect notice based on his stated purpose for ending the tenancy.

In light of the foregoing, I find the Landlord has not established on a balance of probabilities the grounds stated in the Two Month Notice. Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act 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.

As the Tenants have been successful in cancelling the Two Month Notice, I find that the Landlord is not entitled to an Order of Possession under section 55(1) of the Act.

3. Are the Tenants entitled to recover the filing fee?

The Tenants have been successful in cancelling the Two Month Notice. I award the Tenants reimbursement of their filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlord for the month of August 2022.

Conclusion

The Two Month Notice dated March 1, 2022 is cancelled and of no force or effect.

The Tenants are authorized to deduct \$100.00, on account of the filing fee awarded for this application, from rent payable to the Landlord for the month of August 2022.

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 15, 2022

Residential Tenancy Branch