



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on April 27, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 26, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. With the assurance that both parties received full disclosure from the other, I proceeded with the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation or withdrawal of the Two Month Notice?

Should the Tenant be unsuccessful, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement. The Tenant with the previous owner/landlord signed the agreement on June 23, 2020 for the tenancy that began on July 25, 2021. The rent was set at \$4,000, increasing to \$4,060 in 2022.

The Landlord signed this Two-Month Notice on April 21, 2022. The Tenant provided a copy of this document in their evidence. It provides the move-out end-of-tenancy date as July 31, 2022. The Tenant in the hearing provided that they did not move out on this date. The Tenant received this Two-Month Notice via registered mail.

The Landlord explained in the hearing that they purchased the property in 2020, intending for it to be their principal residence. A family member required close care, and so for this reason the Landlord decided to be with that family member and instead rented out the home as a rental unit. This was the initial one-year fixed-term tenancy, with the Landlord's plans contingent on the family member's need for care. At the end of the fixed term, the Tenant asked for another 2 years; however, the Landlord agreed to extend the tenancy on a month-by-month basis, with the promise of another year's duration.

With their family member's recovery, the Landlord did not immediately issue a Two-Month Notice, waiting until the effective end-of-tenancy date would fall after this extension to the original tenancy agreement. As stated in their written submission: ". . . the landlord sent the [Two-Month] Notice in April 2022 to the tenants concerning an end of tenancy at the end of July 2022."

In their written statement, the Tenant presented that there was an issue with the roof in spring 2021. An inspection revealed that "the problem with water ingress into the Property had not been solved" as of the date of this hearing. This led to a prior attempt by the Landlord to end the tenancy because of the property being "uninhabitable", and, as said in the Landlord's Application for the previous dispute on that issue, the Landlord "[could not] bear the responsibility for any long-term health issues." The Landlord withdrew that Application. The Tenant submits this was a prior ongoing dispute about how remediation and a residual mould problem should properly be handled by the Landlord.

Related to that ongoing issue, there was an email dated April 3, 2022 where the Landlord notified the Tenant of their entry on April 6 for a "whole house inspection". The

Tenant posits this was related to the Landlord's current attempt to end the tenancy via the Two-Month Notice, as service of the Two-Month Notice followed mere weeks later.

The Tenant submits this is the real reason why the Landlord wants to end the tenancy. The water leak issue caused conflict between the Landlord and the Tenant, and this is ongoing.

Additionally, on their Application, the Tenant stated the Landlord was not acting in good faith. The Landlord's intention conflicts with the current circumstances of their life, being single, of a relatively younger age, and a full-time student who previously had stated they were living in a different community to care for their family member. This is a very large house and would present a challenge for the Landlord to maintain on their own.

Specific to the Landlord's written submission, the Tenant noted:

- there was no proof from the Landlord that they ever resided on the property between March 2020 and July 2020, before the Tenant moved in
- the rental unit is quite some distance from the Landlord's own workplace, as well as their family member's home – this makes it more likely that, for the Landlord, this rental unit is an investment rather than actual home for them to live in alone.

The Landlord pointed to the Tenant's own separation, and a separate matter of bankruptcy to show that they have other residences they are living in, as provided in evidence in separate court matters. Basically, the "Tenant swore into court that they don't live together".

The Landlord also noted they hired qualified contractors to handle the matter of remediation on the leaking roof. As evidence they presented their invoice dated August 13, 2021. They obtained confirmation of proper air clearance and in line with this they withdrew their attempt to end the tenancy because of the mould problem making the rental unit "uninhabitable" as they had feared. In sum, they submitted the repair issue was "unrelated" to their own need for the rental unit.

As further proof of their intention, the Landlord pointed to their own insurance policy, showing coverage type changing from homeowner to "rented dwelling" in July 15, 2020. This proves the property is not an investment property. In their written submission it is stated thus: "The Property, as evidenced by the insurance purchased, was always intended for personal use by the landlord."

The Landlord also submitted the property is located close to the highway, thereby making it most convenient for all of their needs. Their purpose was to move away from their family's main home. They submit there is no bad faith in their assistance to their family member, and this fact of the Landlord residing in a different community was known to the Tenant, which speaks to the limited timeframe of the initial one-year fixed-term tenancy.

In sum, they reiterated their right to move back into the rental unit property. Their status as being single, or the ongoing tasks of home maintenance, do not factor into the consideration of their good faith intentions in seeking to end this tenancy for their use of the rental unit. Finally, they are aware of the penalties granted under the *Act* where a Landlord does not use the property for the reason stated on the Two-Month Notice; specifically, this is compensation of 12 months' total to the Tenant.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The *Act* s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss a tenant's Application or uphold a landlord's notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

I find there is sufficient evidence to show the Landlord's own original intention in residing in the rental unit on their own. I find the Landlord's age, relationship status, or capability in maintaining the rental unit are submissions that are speculative in nature from the Tenant. The Landlord's need for the larger home is not a legitimate line of inquiry, and certainly there is no evidence *per se* to show the Landlord has no need for a home of that size. That submission from the Tenant is a matter of opinion, and the Landlord's own statements on their original intent resuming after their family member's health had returned carries more weight as evidence

I find the Tenant did not present sufficient evidence to show a true conflict over the continual leaking of the roof. I find the evidence shows the Landlord dropped their intention to end the tenancy because of an uninhabitable rental unit, after remediation contractors showed the air was not harmful. That in itself speaks to the Landlord's good faith intentions, and I find this cancels any notion that the Landlord was ending the tenancy because of any lingering spite in the leak issue.

Aside from that, there was no other evidence showing the Landlord tried to previously end the tenancy for any other reason relating to issues of cause by the Tenant here. As well, there was no evidence showing the Landlord attempted to attribute the leaky roof to any action or inaction of the Tenant in causing or contributing to that issue. With that, I find any issue of bad faith was not shown by the Tenant, and the Landlord has thus overcome the burden of proof.

There is no evidence from the tenant that outweighs that of the landlord regarding the landlord's stated intention. There is no information that runs counter to the landlord's description of their early thoughts about their need for the rental unit in 2020. There is no evidence to show the landlord made other indications to the tenant regarding the need for the rental unit. Without such evidence of conflicting messages or other communication, there are no indications that show the issuance of the Two-Month Notice was done in bad faith.

For these reasons, I uphold the Two-Month Notice issued on April 21, 2022 and find the Landlord issued it in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the landlord is entitled to an order of possession on the effective date.

The tenancy shall end with service of the Order of Possession.

Because the Tenant was not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the tenant. The Landlord must serve this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 14, 2022

Residential Tenancy Branch