



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated April 30, 2022 ("Two Month Notice"); for an Order for the Landlord to Comply with the Act or tenancy agreement; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, an agent for the Tenant, D.B. ("Agent"), and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2004, with a current monthly rent of \$1,562.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit.

The Two Month Notice was signed and dated April 30, 2022, it has the rental unit address, it was served in person on April 30, 2022, with an effective vacancy date of June 30, 2022, and it was served on the grounds that 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).

In the hearing, the Landlord explained why she served the Two Month Notice to the Tenant, as follows:

I have to take back my house, because the cost is adding up so much, we can't pay for her to live in our house. We work so hard, scrape up a little money. She didn't give us any trouble, but taxes go up, insurance goes up....

I asked, can she pay for the water bill? She said no, water is included. And I also

gave her a one year notice to discuss to have a fair market value rent and she said no. So, I have tried everything to give her a chance to be reasonable with us so we can pay the bills, and I also submit the roof cost that has to be done, because it was leaking. Each time the person goes in it costs 300 that we don't have that. So, I am running a lot of debts and I can't afford it.

It is owned by four of us – with my brothers - and we want to retire here. But we weren't going to do this yet, until we can't do it anymore, so my brother has to sell his condo and we will fix up the house and move in. We were forced to do it, because we can't keep up with the debts

The Agent responded:

They never asked for her to pay the water bill, no text, no message. And as for fair market value that they requested in rent – that's not allowed. Only once a year and what the Branch sets.

The roof was leaking for years, yes, that is correct, and there has been damage to her contents which they've never offered to compensate. Even when the roofer was here, he said it should have been done three years prior.

The Tenant said:

She talks about the owners, but we have never anybody, but [S.], her husband. The truth is [D.] has also replaced a dishwasher. Other than that, I've done all repairs myself, most of them without even costing a penny on her part. Every little thing has been done by me. the reason on another matter, bigger repairs like furnace of hot water tank were repaired several times. If the roof had been in a timely manner, it would never had cost them as much as it did.

On another matter, when she said I sublet, I was told that I could. I renovated this house originally and my husband died five years ago. [S.] had said it was okay for me to stay here and have someone help me out with rent. It wasn't until there was a mess downstairs, which I cleaned up, and my cousin left the place, I fixed it up good as new. I've never caused any trouble. There is no reason to say that they are moving in when they own their own houses.

The Landlord said:

The roof - if I fixed it in a timely manner when I don't have money, how do I fix it?

We don't have money to fix the furnace or the hot water tank, but we do.

One of my brother's is going to sell his condo, but we haven't decided if we want to do a basement suite or not, because all four of us are not agreeing to how we want to renovate. We do have family problems and are constantly fighting over dumping money into this house.

The Tenant said:

What major repairs in 17 years, other than the roof? Consider we're not arguing her about repairs and how much it cost. The whole deal is - is a family member moving in or not? When she was first speaking, she said we're going to renovate and all four to move in for retirement, and her brother sold the condo, now it's a cousin.

The Landlord said:

I'm not trying to prove anything; I just simply want my house back. My brother does have to sell his condo, and we need to renovate that house so he can move in. We can't decide if it's a two family house or just one family house. We don't know where we are going to get the money.

Not making up, he can't move in just like it is. The house needs renovation for, I guess, everybody have a standard of living, this is so difficult for me because we are having family problems. [The rental unit is] good enough for the Tenants, but he has a different standard. Either way he has to move in, because we can't have a tenant anymore.

The Tenant then listed some of her evidentiary submissions, noting the Landlord's actions from June 2020 through April 2022, about the Landlord's notice of her plan to raise the rent to a market rate. The Tenant said that the house is "very livable", except for the roof before it was fixed. The Tenant said:

The Two Month Notice - you know there's a pattern of the threat of the renos, and it sounds like they want to make more money by renovating this house, which is why we disputed this in the first place. It's almost threatening us to say fair market value.

The only thing I would like to say, I don't care if the renos could have been done;

I even offered to take back the whole basement. Why do I have to move out to start the renos? I'm more than happy to have them started, while I'm living here.

The Landlord's last statements were, as follows:

All these letters and notice that I sent to them, because I wanted her to be prepared and get notice so she can get ready. We're not a mean or greedy landlord. 17 years, the rent that's been raised only \$18.38 a year. If I knew all these laws, I could have applied for a rent increase with all these expenses. I didn't even do a rent increase while she first lived here. I tried to give her a break. I could have kicked her out back then. She can't afford to pay the rent without sublet. When she is late for me, I try to cash a few days late. I go to make sure there is money in there before I cash the cheque. I could have kicked her out for not paying rent on time.

I have been trying to be nice to her. We can't afford to pay for Property tax didn't freeze when the rent freezed; the insurance people didn't freeze their premiums; it is sad that I am trying to be nice. I haven't seen the house all these years, so not to be complicated for you. Not to cause too much trouble for you. You never told us that you have damage to your property. You turn it around . . . I'm only trying to make a living. I work two jobs. And all of us is over 50 – some almost 60, so it is time to plan our retirement home.

Analysis

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

Section 49 of the Act states that 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.

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that the Landlord has provided sufficient reason and evidence to establish that one of the owners of the residential property has to move in, so that all the owners can save money. Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

As I noted at the end of the hearing, and in order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware of compensation provisions related to a Two Month Notice under section 49 of the Act. Pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51 (2), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: September 23, 2022

Residential Tenancy Branch