



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL-MT

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and for more time to apply to cancel a Two Month Notice to End Tenancy for Landlord's Use.

The Landlord stated that the Tenants' Application for Dispute Resolution was served to him by mail approximately one or two weeks ago.

The Landlord attended the hearing at the scheduled start time of 11:00 a.m. By the time the teleconference was terminated at 11:11 a.m., neither of the Tenants had joined the teleconference. The hearing proceeded in the absence of the Tenants, in accordance with rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

On September 08, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenants. As the evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

I will be considering the Two Month Notice to End Tenancy for Landlord's Use the Tenants submitted to the Residential Tenancy Branch on July 21, 2022, as the Landlord had a copy of that document with him during the hearing.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he

would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Landlord that the Landlord would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Tenants be granted more time to apply cancel a Two Month Notice to End Tenancy for Landlord's Use and, if so, should that Two Month Notice to End Tenancy for Landlord's Use be cancelled?

Background and Evidence

The Landlord stated that this tenancy began approximately 17 years ago and that rent is due by the first day of each month.

The Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use, which is dated January 07, 2022, was personally served to the Tenant on July 01, 2022. The Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by January 07, 2022.

In the Application for Dispute Resolution the Tenants declared that the Two Month Notice to End Tenancy for Landlord's Use was personally served to them on July 06, 2022.

The Landlord stated that he inadvertently reversed the day and the month when he dated the Two Month Notice to End Tenancy for Landlord's Use as 07/01/2022, which is January 07, 2022. He stated that it should have been dated July 01, 2022.

The Landlord stated that he inadvertently reversed the day and the month when he declared the effective date of the Two Month Notice to End Tenancy for Landlord's Use as 07/01/2022, which is January 07, 2022. He stated that it should have been dated July 01, 2022, although he now recognizes that is an incorrect effective date.

The reason for ending the tenancy cited on the Two Month Notice to End Tenancy for Landlord's Use is that the rental unit will be occupied by a child of the landlord or the landlord's spouse. The Landlord stated that his daughter has recently been accepted into UBC and that she will be residing in the rental unit.

Analysis

Section 49(3) of the *Residential Tenancy Act* (*Act*) permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that the Tenants were personally served with a Two Month Notice to End Tenancy for Landlord's Use in July of 2022. I find that this Two Month Notice to End Tenancy for Landlord's Use, which was served pursuant to section 49(3) of the *Act*, was dated 07/01/2022 (January 07, 2022).

Section 68(1) of the *Act* grants me the authority to amend a notice to end tenancy if the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice.

As the Two Month Notice to End Tenancy for Landlord's Use was personally served to the Tenant in July of 2022, I find that the Tenants knew, or should have known, that the Two Month Notice to End Tenancy for Landlord's Use was dated incorrectly. I find that reversing the month and day when a date is numerically recorded is relatively common and I therefore find it reasonable to amend the Two Month Notice to End Tenancy for Landlord's Use to show it is dated July 01, 2022.

Section 49(2) of the *Act* stipulates that a notice to end tenancy that is given pursuant to section 49(3) of the *Act* must give notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice; 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 if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I find that there is insufficient evidence to determine whether the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants on July 06, 2022, as the Tenants declared in the Application for Dispute Resolution, or if it was served on July 01, 2022, as the Landlord testified. I am satisfied, however, that it was either served on July 01, 2022 or July 06, 2022.

As the Tenants received the Two Month Notice to End Tenancy for Landlord's Use on July 01, 2022 or July 06, 2022 and rent is due by the first day of each month, the declared effective end date of the Two Month Notice to End Tenancy for Landlord's Use could not be earlier than September 30, 2022. To be effective on August 31, 2022, the Two Month Notice to End Tenancy for Landlord's Use would have had to be served to the Tenants on, or before, June 30, 2022.

Section 53 of the *Act* stipulates that if the effective date stated in a notice to end tenancy 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. Pursuant to section 53 of the *Act*, I therefore find that the deemed effective date of this Two Month Notice to End Tenancy for Landlord's Use is September 30, 2022.

Section 49(8) of the *Act* permits a tenant to dispute a notice given under subsection (3) by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Residential Tenancy Branch records show that the Tenants filed an Application for Dispute Resolution to dispute this Two Month Notice to End Tenancy for Landlord's Use on July 21, 2022. As the Two Month Notice to End Tenancy for Landlord's Use may have been received by the Tenants on July 06, 2022, I find that they may have filed it in accordance with section 49(8) of the *Act*. As such, I find it is not necessary for me to consider the Tenants' application for more time to apply cancel a Two Month Notice to End Tenancy for Landlord's Use.

On the basis of the undisputed testimony of the Landlord, I accept that his daughter will be moving into the rental unit. I therefore find that the Landlord has grounds to end the tenancy, pursuant to section 49(3) of the *Act*, and I dismiss the application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

As the application to set aside the Two Month Notice to End Tenancy for Landlord's Use has been dismissed and the Two Month Notice to End Tenancy for Landlord's Use

complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective on **September 30, 2022**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 13, 2022

Residential Tenancy Branch