



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for more time to apply to cancel an eviction notice; and for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated May 14, 2022. However, after reviewing the Parties' documentation and testimony, I found that the Tenant was not late in applying to cancel the Two Month Notice. As such, we went focused on reviewing the validity of the Two Month Notice.

The Tenant and an agent for the Landlord, P.P. ("Agent"), 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 Agent 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, a 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 in 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 about ten years ago, but neither was sure of the date. They agreed that the Tenant is required to pay the Landlord a monthly rent of \$2,720.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$2,200.00, and no pet damage deposit. The Agent said that the Landlord still holds the security deposit in full.

The Tenant submitted a copy of the Two Month Notice, which was signed and dated May 14, 2022, and which has the rental unit address. It was served in person to the Tenant's adult son on May 15, 2022, with an effective vacancy date of July 31, 2022. The Two Month Notice was served on the grounds that the Landlord is a family corporation and that a person owning voting shares in the corporation, or a close family member of that person intends in good faith to occupy the rental unit.

As the Landlord had the burden of proof, I asked the Agent in the hearing why I should confirm the Two Month Notice and give the Landlord an order of possession. The Agent said that his father is sick with early stage dementia and that he has been living with the

Agent's son, but the son has purchased another property. As such, the Agent's family needs to move to the residential property with his father to look after him. In the hearing, the Agent also said:

This is set out in the submitted evidence – we intend to live on the property with my father. He is no longer safe to be alone anymore. My son lives with him at the moment, but has bought a house and will be moving out. I can't leave him alone. On three occasions, he has left the residence and got lost. The RCMP brought him home once when he didn't know where he was. He has left the burner on with a pot on the stove, but luckily my son was home. My Dad was nowhere to be found – he had gone for a walk.

The other day, he got lost, and 4½ hours later my son found him in [intersection provided] in front of a bank, with no idea where he was. My son had to bring him home.

It is my responsibility to look after my Dad. The house where he is now is too small; it has two bedrooms. Actually, I'm renting a house now for \$3100.00 a month. The [residential property] is my inheritance, so I want to live here and have him live with us to make sure he's okay. There's no sense at living in a rental place. I need to hire someone to look after him, while I'm at work. I can't afford to pay rent and a caregiver.

We don't put parents in homes; the responsibility falls on the eldest son. They only have a son and a daughter. He did a lot for us for us as kids. He worked for 30 years... raised us the best he could, so the responsibility is on me to take care of him.

He'll be 70 and he's legally blind and has early onset of dementia. Doctors charge so much for documentation; they won't just give me anything like that.

That's basically the case. I have to look after my Dad. I need to step up and take care of my Dad. And he has diabetes – the blindness is due to the diabetes. He has to get a shot in both eyes regularly. There are days that everything is just blurred. It's not safe to live on his own.

But I want to take possession for this reason. If not for this, I wouldn't ask them to vacate.

The Tenant responded:

I feel sorry for them, but I have been diabetic for 22 years, but I think it was when I saw the Landlord] in June - he was nice to me and recognized me and my wife and invited us back to the house. He didn't want to take the paper. I said your son told us we have to move. 'I will talk to my son', he said.

But the thing was, after that day, the son sent me a message and the rent has to be increased, and my son said you can't do that. The problem here is they want to increase the rent and my son went to RTB and they said it can only be raised by 3%. So, this year, I know they prefer to move, because they want more. The rent over there will be \$3,000.00.

For me, I said to him, he takes care of the house for his Dad, when I came back, he gave me the letter and I need more time. I have a family, too, and it's hard to get a house. After we move, they can rent it out for more.

I was sorry for [the Landlord]; he was happy and talked to me and after that.

I took that opportunity to explain to the Parties that if I grant the Landlord an order of possession and he does not use it for the stated purpose in the Two Month Notice, then the Tenant can apply for compensation pursuant to section 51 (2) of the Act.

Section 51 of the Act sets out a tenant's compensation, after a landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51 (2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

After I explained this, the Agent said:

I'm willing to let anyone – bylaw officers, anyone - come and see if I'm living in that property until ten years, 15 years from now - whatever it takes. I'm not doing it to raise the rent. They've been here for ten years; they're nice people; I have no problem with them at all. It's not about kicking them out to raise the rent. . . . I'm willing to have anyone check. There's no way I'm going to leave. I'm bringing

my father in and there is nothing else. Anyone can come check in ten years, or two years. In six months, I will still be there. There is no chance that I will ever leave. My father's well-being is all I want. The man did a lot for me and my sister. There's nothing I wouldn't do to help him.

The Tenant said:

I feel sorry for them; his Dad is a nice guy. And the only thing, four years ago we were looking for a different house. He didn't want me to move. He talked to us, and I said okay we're staying here. But they want to move in here, but I need time.

I noted to the Tenant that he has had since May 15, 2022, when he was served with the Two Month Notice to look for a new rental unit; however, the Tenant indicated that he had waited until the hearing to do that. The Tenant was not required to look for alternate accommodation, but given the consequences if he is unsuccessful here, it would have been prudent of the Tenant to start looking.

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 (3) 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.

Section 49 (4) of the Act states that a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

I find that the Agent provided sufficient evidence to establish that he needs to move into the residential property to provide a home for his father and his family. I found both Parties to be credible in the hearing; however, I find on a balance of probabilities that the Landlord has served the Two Month Notice in good faith and sincerely intends to pursue the purpose set out in that Notice.

I also find that the Two Month Notice is consistent with section 52, as to form and content.

Given the above, and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit 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.

Conclusion

The Tenant is unsuccessful in his 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 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: October 21, 2022

Residential Tenancy Branch