



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified he served that the Landlord with the notice of dispute resolution form and supporting evidence package via registered mail on October 24, 2022. The Tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The Landlord confirmed receipt of the notice of dispute resolution package via registered mail. I find that the Landlord was deemed served with this package on October 29, 2022, five days after the Tenant mailed it, in accordance with sections 88, 89, and 90 of the Act. The Tenant confirmed he received the Landlord's evidence package,

The hearing was convened by telephone conference call. The parties were advised that pursuant to rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "Rules"), the parties are prohibited from recording dispute resolution hearings, except as allowed by rule 6.12. As neither party requested nor was granted authorization to hire an accredited Court Reporter as allowable under rule 6.12, I confirmed with the parties that they were not recording the hearing.

Issues to be Decided

Is the Tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If the Tenant fails in his application, is the Landlord entitled to:

1) an order of possession?

Preliminary Issue:

Pursuant to s. 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the proceedings, the settlement may be recorded in the form of a decision and/or an order. During the hearing the Landlord and Tenant agreed to try to negotiate a settlement for this dispute. Both parties made attempts at settlement proposals but ultimately an agreement between the parties could not be reached.

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting November 1, 2020 ending on October 31, 2021 to continue as a periodic month-to-month tenancy. Monthly rent is \$1650.00 and is payable on the first of each month. Included in the rent was: water, internet, sewage disposal, snow removal, storage, garbage collection, recycling services, free laundry (in suite); refrigerator, dishwasher, stove and oven, window coverings, and parking for one vehicle. The tenant paid the landlord a security deposit of \$800.00. The landlord still retains this deposit.

On September 25, 2022, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. The effective date of the notice is November 30, 2022. The tenant has 15 days from the date he received the Two Month Notice to file for dispute resolution. The tenant filed for Dispute Resolution on October 14, 2022 within the 15-day window.

The tenant objects to the landlord's need for the rental unit arguing the landlord served the Two Month Notice with an underlying motive – hence served in bad faith- to evict the tenant because of ongoing tension.

The tenant testified that the tenancy agreement includes internet service in the rent. The landlord then told the tenant he was responsible to provide his own internet service, which resulted in the tenant being out of pocket.

The landlord also used the parking spot assigned to the unit without the tenant's permission until the tenant called him on it.

The tenant also testified that in September, he did not pay his rent in full. There was a shortfall of \$300.00. The tenant felt justified in not paying the \$300.00 because of the

added internet expenses. The Two Month Notice followed closely thereafter. The tenant stated that he has since paid all rent including the \$300.00 in full.

The tenant also questions whether the landlord lives in a rental unit because he does not have a separate address from the main house.

With respect to the damages to the rental unit alleged by the landlord, the tenant states the door was damaged when the police kicked the door in. He further states that the pictures the landlord submitted do not show damage to the unit. He acknowledges the rental unit was a mess but that he was in the process of cleaning it up. He states the landlord harasses him on a daily basis to inspect the rental unit, to confirm a move out date, to book the elevator and to pay a \$200 move out fee that is not found in the strata bylaws.

The tenant has paid for November 2022 rent in full. He has not received the equivalent of one-month's rent in compensation.

The landlord testified that he currently lives in a basement suite. His mail is delivered to the primary address and the landlord hand delivers the mail to the units. There are four suites in total.

The landlord states that in September he decided he no longer wanted to rent or live in a basement suite. He said he just wants his condo for his own use. For that reason, the landlord issued the Two Month Notice and he denies any ulterior motives.

The landlord testified that he was aware of the penalty for not using the rental unit for the stated purpose for which the Notice was given- compensation in the amount equal to 12 months' rent payable under the tenant's current tenancy agreement.

The landlord testified that he gave notice to end tenancy to his landlords on September 30, 2022 with a November 30, 2022 end of tenancy date. The landlord submitted an RTB-8 into evidence. He states the landlords have rented the basement suite effective December 1, 2022. If the tenant does not vacate the rental unit, the landlord will be homeless.

The landlord received a call from the strata manager on November 3, 2022 telling him that his unit "is completely destroyed". The police were called to the rental unit and broke the door down to access the unit. The landlord provided a substantial number of photos of the damaged door and the condition of the rental unit. The landlord does not deny that he is extremely concerned about the condition of the rental unit based on the photos. He believes the tenant intentionally 'started destroying the unit' because he was upset at receiving the Two Month Notice.

The landlord acknowledged some mutual tension and conflict stating that the tenant failed to report a leak that caused damage to the commercial tenant below. He has also

incurred significant costs to replace the door and had to pay for plumbing services the strata charged him to repair the leak. The landlord stated that he did not tell the tenant that there was a \$200 move out fee but rather that he would check with strata about any move out fees and let him know. The landlord confirmed that there was no move out fee.

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 the landlord an order of possession if the Two Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant’s Application or uphold the landlord’s notice.

Both parties are familiar with the *Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord*, which gives a statement of the policy intent of the legislation. The key point as set forth in the guideline is:

When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the [Act] or the tenancy agreement.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

In this matter, both parties clearly articulated and are aware that 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 he issued the Two Month Notice for a valid reason. This finding has two components that form the basis for my conclusion.

First, I find as fact, to support my conclusion that the landlord had a good faith intention to use the rental unit for the purpose stated in the Two Month Notice.

The Landlord currently resides, as a tenant, in a basement rental unit. The Landlord submitted into evidence an #RTB-8, Mutual Agreement to End a Tenancy, signed and dated September 30, 2022 with an end of tenancy date of November 30, 2022. The Mutual Agreement to End a Tenancy was signed by the Landlord (as Tenant) and the Landlord of the basement rental unit.

The tenant interpreted the landlord's inquiries about setting up an end of tenancy condition inspection, booking the elevator, confirming the tenant was moving on November 30, and the landlord indicating there may be a move out fee as "harassment". It is unclear if the tenant believes the intent behind these inquiries are to provoke the tenant into ending tenancy on his own. I find this less likely based on my assessment of the landlord's testimony. I find the landlord was genuinely concerned that should the tenant not vacate the rental unit on November 30, 2022, he would be homeless since he gave notice to his landlord.

I also found persuasive that the landlord openly acknowledged the financial consequences should he not reside in the rental unit or if he sells it. The landlord testified that he was aware of the 12 month rent penalty levied should he not use the rental unit for the stated purpose on the Two Month Notice.

Second, to support my findings that there is insufficient evidence of an ulterior motive or tendency on the part of the landlord, I find the following as fact:

The landlord admitted there was tension and conflict in the landlord/tenant relationship especially over a leak that required repair, the recently damaged door and the recently discovered condition of the rental unit.

In September, the tenant did not pay rent in full deducting the "overpayment" from a dispute about internet fees. In the tenant's written submission, he states that over the 2 year tenancy he has paid his rent late seven times. Although the landlord allegedly told the tenant he could get more rent, the landlord never followed through with a One Month Notice for Cause to end tenancy for the seven late rent payments.

I also note the timing of the Two Month Notice pre-dated the photos taken of the damage to the door and condition of the rental unit by about six weeks. The landlord was made aware of police incident and the door damage from strata in November and the Two Month Notice was issued in September. This means the decision to issue the Two Month Notice was not predicated on the police incident or the state/condition of the rental unit.

I have considered the tenant's testimony that the landlord issued the Two Month Notice because the tenant objected to paying internet fees. The tenant stated that the tenancy agreement included internet and directed me to the tenancy agreement which confirms internet was included with the rent. While s.14 of the Act prohibits changes or amendments to a tenancy agreement, even when the tenancy converts to a periodic month-to-month tenancy at the end of the fixed term, unless both parties agree to the amendments, I am not satisfied that this issue alone led the Landlord to file a Two-Month Notice.

As noted above in Policy Guideline 2A, "if the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what

they said on the Notice to End Tenancy". I find the landlord has met the burden of proof on a balance of probabilities that his intention is to live in the unit.

I dismiss the Tenant's application to cancel the Two Month Notice.

Section 55(1) provides that the director must grant the landlord an Order of Possession if the Landlord's Notice complies with s. 52 (form and content) and the Tenant's application is dismissed.

I find the Notice complies with s. 52.

As I have dismissed the Tenant's application, I grant the Landlord an Order of Possession effective November 30, 2022, at which time the Tenant and occupants must provide vacant possession to the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

A Tenant who has received a Two Month Notice is entitled to compensation in the amount of 1 month's rent. The landlord must pay the tenant this compensation on or before the effective date of the Two Month Notice. The Landlord and Tenant confirm that the Tenant has not received the compensation he is entitled to under the Act.

I order the Landlord to pay the Tenant one month's rent in the amount of \$1650.00 on or before the effective date of the Two Month Notice, November 30, 2022.

Conclusion

I dismiss the Tenant's application without leave to reapply.

Pursuant to sections 62 of the Act, I order that the Landlord pay the Tenant \$1650.00 representing the following:

- compensation in the amount of 1 month's rent

Pursuant to section 55 of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord by November 30, 2022, at 1:00 pm.

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: November 18, 2022

Residential Tenancy Branch