



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, AAT, OLC**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy (“Two Month Notice”) pursuant to section 46
- allowing the tenant and guests access to the unit or site pursuant to section 30 of the Act
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act

Both parties attended the hearing with the landlords being represented by landlord CLK, while the tenants were represented by tenant RB. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the Two Month Notice dated October 10, 2022, with an effective date of December 15, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Matter

Rule 2.3 of the RTB Rules of Procedure states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.” This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

The tenant applied for orders allowing the tenant and guests to access the rental unit or site, and compelling the landlord to comply with the Act, regulations and the tenancy agreement. These issues are not related to the dispute of the Two Month Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced November 1, 2020, and is currently on a month to month basis. Rent was \$1,350.00 per month due on the first of each month and the landlord holds a security deposit in trust of \$680.00. The tenant still occupies the rental unit.

The tenant is prepared to vacate the unit on December 31, 2022. She wishes to receive compensation for one month’s rent that she is entitled to under the Act.

The landlord wishes the tenant to vacate the rental unit so that the landlord can occupy the unit. The landlord’s parents will be occupying the portion of the rental property where the landlord currently lives. The landlord wishes the tenant to move out on December 15, 2022, and does not wish to pay compensation to the tenant.

Analysis

Section 49 of the Act states in part:

49(2) Subject to [section 51](#) [tenant's compensation: [section 49](#) notice], a landlord may end a tenancy

(a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i)not earlier than 2 months after the date the tenant receives the notice,

(ii)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

(iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

Although the effective date of the tenancy on the Two Month Notice is listed as December 15, 2022, section 49(2)(a)(ii) states that the effective date of the notice is the day before the day in the month that rent is payable. Section 53 of the Act then operates to deem the effective date as the earliest date that complies with section 49(2)(a)(ii).

53 (1)If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2)If the effective date stated in the notice 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.

As rent is due on the first of the month, by operation of this section the effective date becomes December 31, 2022.

Other than the effective date of the Two Month Notice which has been changed by the deeming provision of section 53 of the Act, the Two Month Notice complies with the form and content requirements of section 52 of the Act and is therefore valid. The tenant is not disputing the validity of the Two Month Notice.

With respect to compensation, section 51 of the Act states in part:

51 (1)A tenant who receives a notice to end a tenancy under [section 49](#) [*landlord's use of property*] 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The tenant is entitled to compensation of the equivalent of one month's rent. Under the Act, the tenant is entitled to withhold that amount from the last month's rent.

As the tenant is agreeable to vacating the rental unit and not longer wishes to dispute the Two Month Notice the tenant's application is dismissed. The landlord is entitled to an order of possession which is effective December 31, 2022, at 1:00pm.

Conclusion

The tenant's application is dismissed. The tenant is entitled to compensation of the equivalent of one month's rent. Under the Act, the tenant is entitled to withhold that amount from the last month's rent.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 21, 2022

Residential Tenancy Branch