



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 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 for the Landlord’s Use pursuant to section 49
- recovery of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord AS appearing along with a witness NN. The tenant MC, appeared with a witness JB.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated September 12, 2022 with an effective date of December 1, 2022. The landlord confirmed receipt of the dispute notice and the tenant’s materials. Service for both parties complies with sections 88 and 89 of the Act.

The tenant stated he received the landlord’s materials in response to the dispute notice by regular mail on November 21, 2022. Rule 3.16 of the RTB Rules of Procedure state:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent’s evidence must be

received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 88 of the Act allows service by regular mail. I therefore find that the tenants were properly served in time by the landlord.

Issue(s) to be Decided

1. Is the Two Month Notice to End Tenancy for Landlord's Use of Property valid and enforceable against the tenants? Can the tenants cancel the Notice?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on October 1, 2019. Rent is currently \$710.50 per month payable on the first day of the month. The landlord holds \$350.00 as a security deposit and \$150.00 as a pet deposit in trust for the tenants. The tenants still occupy the residence.

The landlord stated that she requires the rental unit for both her and her mother. She stated she is required to be in the city one to two times per month and she wishes to have a place to keep her belongings. The landlord said, her mother will be moving in as well and will live there full time. The landlord said she does not have a room for her mother in her current residence. The landlord provided a letter from her mother confirming her intent to move into the residence. A neighbour also confirmed that the landlord had spoken with her about moving into the rental unit.

The tenants alleged that the landlord is not acting in good faith and is not intending to move in with her mother. He stated that there is a previous decision by an arbitrator granting the tenants application for dispute resolution for a One Month Notice to End Tenancy served on the tenants. He believes that the landlord merely wishes to end the tenancy and believes that the landlord and the landlord's witness are collaborating to have his tenancy ended.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the

claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenants.

Section 49(3) of the Act states:

(3)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.

The landlord has the onus of establishing that she or a close family member intend in good faith to occupy the rental unit. RTB Policy Guideline 2A states:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. 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: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

I have considered all of the evidence relevant to the application and find that the landlord has established that she intends to occupy the rental unit along with her mother. Specifically, I have considered the letter of the mother stating that it is her intention to occupy the rental unit, and the evidence of the neighbour who confirmed that the landlord had advised her of her plans to occupy the unit with her mother.

I have reviewed the previous decision of the RTB and find that it is not relevant to the issues before me. I note that it was a different notice to end tenancy and the decision is not recent. Circumstances of the parties can change over time, and I accept that has happened here.

The tenants alleged that the landlord is not acting in good faith, however, they have not provided specific evidence to support this allegation.

I find that the Two Month Notice is valid and enforceable and therefore the tenants' application to cancel the Two Month Notice is dismissed. The landlord will be granted an order of possession with an effective date of December 31, 2022 in accordance with section 49(2)(b)(ii) of the Act.

Conclusion

The tenants application is dismissed. The tenants must bear the cost of their own filing fee.

The landlord is granted an order of possession which will be effective at 1:00pm December 31, 2022. The order of possession must be served on the tenants. 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: December 20, 2022

Residential Tenancy Branch