



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL LRE OLC FFT

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) made by the Tenants under the *Residential Tenancy Act* (the “Act”) in which the Tenants seek:

- an order to cancel a Notice to End Tenancy for Landlord’s Use of Property dated June 30, 2022 (“2 Month Notice”) pursuant to section 49;
- an order to suspend or set conditions on the Landlord’s right to enter the rental unit pursuant to section 70;
- an order for the Landlord comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The Landlord’s agent (“GB”), one of the Tenants (“HB”) and the Tenants’ advocate (RT”) attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

RT stated the Notice of Dispute Resolution Proceeding, an amendment (“Amendment”) to the Application dated August 11, 2022 and the Tenants’ evidence (collectively the “NDRP Package”) was served on the Landlord by Xpresspost on August 15, 2022. RT submitted into evidence a copy of the Canada Post tracking number and tracking information to corroborate his testimony. GB acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlord accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Service of Landlord’s Evidence on Tenants

GB stated the Landlord served a copy of the Landlord’s evidence, consisting of the Landlord’s Central Security Register, on the Tenants but GB could not locate the information on the method and date of service of the evidence on the Tenants. RT acknowledged the Tenants received a copy of the Central Security Register on November 15 or 16, 2022 but argued this evidence was served late by the Landlord on the Tenants.

Rule 3.15 of the RoP states:

3.15 Respondent’s evidence provided in single package

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

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.

See also Rules 3.7 and 3.10.

Rule 3.15 required the Landlord to serve its evidence on the Tenants at least seven days before this hearing.

The RoP defines “days” as follows:

Days

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.

- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- c) *In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.*
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

[emphasis in italics added]

Regardless of the method of service of the Landlord's evidence on the Tenants, RT acknowledged the Tenants received the evidence on November 15, or 16, 2022. Assuming the evidence was received on November 16, 2022, I find the Landlord's evidence was served on the Tenants at least seven days before the hearing. As such, I will admit the Landlord's evidence for this proceeding.

Preliminary Matter – Withdrawal of Two of the Tenants' Claims

At the outset of the hearing, I inquired about the Tenants' claims for cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities and One Month Notice to End Tenancy for Cause. RT stated that Tenants wanted to withdraw those claims. GB did not have any objections to the dismissal of the two claims.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

At the request of RT, and with the consent of GB, I order the Application be amended to remove the Tenants' claims for cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities and One Month Notice to End Tenancy for Cause from the Application.

Preliminary Matter – Severance and Dismissal of Tenants' Claims

At the outset of the hearing, I observed the Application included claims for: (i) an order to suspend or set conditions on the Landlords' right to enter the rental unit and; (ii) an order for the Landlord comply with the Act, Regulations and/or tenancy agreement (collectively the "Tenants' Other Claims").

Rule 2.3 of the Rules states:

2.3 Related issues

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

This hearing was scheduled for one hour. At the outset of the hearing, I advised the parties the primary issue in the Tenants' Application was whether the tenancy would continue or end based on the 2 Month Notice. Accordingly, I find the Tenants' Other Claims were not sufficiently related to the primary issues of whether the 2 Month Notice would be cancelled. Based on the above, I will dismiss the Tenants' Other Claims, with or without leave, depending upon whether I cancel the 2 Month Notice.

Issues to be Decided

- are the Tenants entitled to cancellation of the 2 Month Notice?
- are the Tenants entitled to recover the filing fee for the Application from the Landlord?
- if the Tenants are not entitled to cancellation of the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony, only the details of the respective submissions and/or arguments of the parties relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the claims made in the Application and my findings are set out below.

The parties agreed the tenancy commenced about 1999, with rent of \$700.00 payable on the 1st day of each month. The parties agreed the rent is now \$862.00 per month. The Landlord and RT stated they believed the security deposit of ½ the original monthly rent was paid by the Tenants. As it is not relevant for my decision, I do not make a determination of the amount of the security deposit actually paid by the Tenants. The Landlord stated the Tenants did not have any rental arrears. Based on the testimony of the parties, I find there is a tenancy between the Landlord and Tenants and that I have jurisdiction to hear the Application.

RT submitted into evidence a copy of the 2 Month Notice. GB stated the Landlord served the 2 Month Notice on the Tenants in-person on June 30, 2022. RT acknowledged the Tenants received the 2 Month Notice. I find the 2 Month Notice was served on the Tenants pursuant to the provisions of section 88 of the Act.

Page 2 of the 2 Month Notice states the reason for ending the tenancy is:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input checked="" type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and 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.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

GB stated the Landlord is a family corporation and that the sole shareholder of the Landlord was DRB. GB submitted into evidence a copy of the Central Securities Register of the Landlord. GB stated the daughter ("Daughter") of DRB would be moving into the rental unit when the Tenants vacated it. GB stated the Daughter had recently retired from her job, sold her house and is currently living in North Vancouver, BC. GB stated there were 46 rental units in the residential property. When I asked why the Landlord had served the 2 Month Notice on the Tenants for their rental unit instead of a rental unit located elsewhere in the residential property, GB stated the Tenants' rental unit was the nicest unit in the building as it was on the top floor of the building and had excellent views. GB also stated the rental unit had two bedrooms and that two-bedroom units in the building did not become vacant very often.

I noted that the 2 Month Notice stated the reason for ending the tenancy was that the child of the landlord or landlord's spouse would occupy the rental unit. I pointed out that the Landlord is a corporation and that the Landlord did not select the checkbox on the 2 Month Notice that states "The landlord is a family corporation and a person owing voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit".

RT submitted the Landlord did not correctly complete the 2 Month Notice and, as a result, the 2 Month Notice does not comply with the content requirements of section 55 of the Act.

Analysis

Sections 49(1), 49(2), 49(3), 49(4), 49(7), 49(8) and 52 of the Act state in part:

49(1) In this section:

[...]

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
 - (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;
- [...]
- (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
- [...]
- (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.*
- (4) *A landlord that is 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.*

- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
 - (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], *state the grounds for ending the tenancy*,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

[emphasis in italics added]

The 2 Month Notice was served on the Tenants in-person on June 30, 2022. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the 2 Month Notice, being July 15, 2022. The records of the RTB disclose the Tenants made their application for dispute resolution to dispute the 2 Month Notice on July 12, 2022. I find the Tenants made the Application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

GB stated the Landlord is a family corporation and that the sole shareholder of the Landlord was DRB. GB submitted into evidence a copy of the Central Securities that states all the shares of Landlord are owned by DRB as trustee for the DRB Alter Ego Trust. GB stated the Daughter would be occupying the rental unit after the effective date of the 2 Month Notice. However, the 2 Month Notice stated a child of the Landlord would occupy the rental unit. The checkbox selected by the Landlord is for ending the tenancy pursuant to section 49(3) of the Act to end the tenancy. However, the Landlord is a corporate entity and cannot have a child, the Landlord cannot rely on section 49(3) of the Act to end the tenancy. As a family corporation, the Landlord was required to rely on section 49(4) of the Act to end the tenancy. To do so, the Landlord was required to mark the checkbox on page 2 of the 2 Month Notice to indicate "The landlord is a family corporation and 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 did not correctly indicate the grounds for ending the tenancy on the 2 Month Notice, I find the 2 Month Notice did not comply the content requirements of section 52 of the Act when it was served on the Tenants. I also note that, even assuming the Landlord had correctly completed the 2 Month Notice, it did not submit any evidence to demonstrate that the Landlord, at the time of giving the notice, had a reversionary interest in the rental unit exceeding 3 years and that it holds not less than 1/2 of the full reversionary interest. As the 2 Month Notice did not comply with the content requirements of section 52 of the Act, I find the 2 Month Notice was not effective when it was served on the Tenants. As such, I order the 2 Month Notice to be cancelled. The tenancy continues until ended in accordance with the provisions of the Act.

As the Tenants have been successful in the Application, I grant the Tenants recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

I dismiss the Other Claims with leave to reapply. The Tenants have the option of filing a new application for dispute resolution to make the Other Claims.

Conclusion

The 2 Month Notice is cancelled. The tenancy continues until ended in accordance with the Act.

The Tenants are ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

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 9, 2022

Residential Tenancy Branch