



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL x 4 (OLC, FFT)

Introduction

This hearing dealt with 4 joined tenant Applications for Dispute Resolution (joiner applications) under the *Residential Tenancy Act* (Act) seeking to cancel multiple 2 Month Notices to End Tenancy for Landlord's Use of Property (2 Month Notices) served on tenants of 4 units in the same rental property.

On January 5, 2023, the hearing began and after a total of 56 minutes, it was clear that additional time was necessary to consider the merits of the joiner applications before me. As a result, the hearing was adjourned until January 16, 2023 at 11:00AM and after an additional 45 minutes, the hearing concluded.

Attending the adjourned hearing were all four tenants, JQ, RL, YZ, LX (tenants), counsel for the landlord, BM (counsel), the landlord, YX (landlord), and witness JN (witness). All parties, except counsel were affirmed. Counsel was not affirmed as counsel confirmed that they have been called to the BC Bar and as such, have already sworn an oath. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have considered all of the relevant testimony, submissions and documentary evidence presented. Only the relevant information is summarized below.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the tenancies end based on a 2 Month Notice for all 4 tenants?
- If yes, is the landlord entitled to an order of possession?

Background and Evidence

The tenancies were discussed during the hearing. Three of the four tenancies have written tenancy agreements, with the fourth being a verbal agreement. The tenancy agreement for tenant LX ends on February 28, 2023. All other tenancies have reverted to a month-to-month tenancy before me.

Regarding the first four 2 Month Notices all of which were dated October 8, 2022, with an effective vacancy date of October 31, 2022, (October 2 Month Notices) the parties were advised on January 5, 2022, that all four October 2 Month Notices were in an outdated 2018 version of the 2 Month Notice, which I find does not comply with section 52 of the Act, and which I will address further below.

As a result, of the above, the remainder of the hearing focussed on the four 2 Month Notices all dated November 2, 2022, with effective vacancy dates of February 28, 2023 (November 2 Month Notices). The reason stated on the November 2 Month Notices state:



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.

In addition, the names of the buyers and their address are listed on the 2 Month Notice were required and a copy of the purchaser's written request for the seller to issue an eviction notice is attached and reads as follows:

WHEREAS:

- A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated July 31, 2022 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).
- D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

NOW THEREFORE in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on February 28, 2023.

For the purpose of giving the Tenant Notice under Section 49 of the *Residential Tenancy Act*, the Buyer(s) address is: 280-1685 W 4th Ave Vancouver BC and the Buyer(s) hereby consent to the Seller(s) including the Buyer(s) name(s) and such address on the Tenant Notice for the purpose of Section 49(7) of the *Residential Tenancy Act*.

Executed by the Buyer(s) this 28 day of October, 2022.

DocuSigned by:

Landlord evidence

Counsel submitted a Contract of Purchase and Sale (Contract) dated July 31, 2022. Counsel submits that all conditions of the Act have been satisfied and that the buyers, LH and NTL (Buyers) have requested that the landlord seller, YX (Landlord) issue the 2 Month Notice as the Buyers intend in good faith to occupy the rental unit and have asked the Landlord in writing to serve all four tenants with the appropriate November 2 Month Notice.

Counsel also presented an addendum to the Contract, which was reviewed during the hearing. The Landlord called NG as a witness (Witness). The following is a summary of the questions asked of the Witness and the answers provided. Q will represent "question", and A will represent "answer." Initials will be used to protect privacy.

Counsel Q1: Tell me whether or not you are a realtor?

A1: Yes.

Counsel Q2: Were you involved with the Contract?

A2: Yes.

Counsel Q3: Did you represent the Buyers?

A3: Yes.

Counsel Q4: What are the names of the Buyers?

A4: LH and NTL.

Counsel Q5: Is the Contract executed?

A5: Yes.

Counsel Q6: What do the Buyers intend to do with the property?

A6: They intend to move in and use the property.

Counsel Q7: Can you tell us a little about the Buyers?

A7: They are a young couple with one child and another child on the way and this property will be close to the wife's parents to help with the children.

Counsel Q8: Has their intentions changed at all?

A8: No.

Counsel Q9: Is the intention the same today (January 16, 2023)?

A9: Yes.

Counsel Q10: Tell me about the role of vacant possession.

A10: We can not legally have a subject to 2 Month Notice as our standard notices are financing, inspection, etc.

Counsel Q11: Is it your recollection that you issue a form removing the conditions on the Contract?

A11: Yes, it was signed by the Buyers on August 8, 2022 which was the day all other conditions were removed.

Counsel Q12: Can you review the history of the completion dates?

A12: The original Contract had a completion date of November 3, 2022 with vacant possession due on November 4, 2022 however that changed as the Buyers were not being given vacant possession.

Counsel Q13: Why, what happened?

A13: In mid-October (2022) they were made aware that the tenants would not be

vacating and the decision was made to change the possession dates accordingly.

Counsel Q14: Was this by addendum?

A14: Yes.

Counsel Q15: What are the new dates based on the addendum?

A15: April 3, 2023 is the completion date and April 4, 2023 is the possession date.

Counsel Q16: Do the Buyers still have the intention to take residency in the home?

A16: Yes.

Cross-examination by tenants

Tenant Q1: Did your clients live on Union Street in Burnaby?

A1: Correct, in the home of the LH's parents at the moment.

Tenant Q2: What do you mean by completion date?

A2: A legal date where the transfer of title happens.

Tenant Q3: Do the buyers look to move in immediately?

A3: Yes, on the possession date.

Tenant Q4: Did they want to move in back in November?

A4: Yes.

Tenant Q5: Why was transfer of title not done in November?

A5: Because we were told the tenants refused to vacate and that the Buyers were not being provided with vacant possession.

Tenant Q6: Is taking possession of the home required to change the land title?

A6: I'm confused. *(Counsel objected, arbitrator advised Tenant to move on to next question)*

Tenant Q7: The Buyers are looking to move in?

Arbitrator intervened as that question was already asked and answered.

Tenant Q8: Will you get paid only if the Contract...

Counsel objected and arbitrator intervened as question determined not to be relevant.

Redirect by Counsel

Counsel Q17: Witness are you familiar with the Buyers business address?

A17: Yes.

Counsel Q18: Is it on West 4th?

A18: Yes.

(Witness excused)

Tenants' evidence

There is no disputing that the tenants received the November 2 Month Notice. The tenants applied to dispute the four 2 Month Notices on time by amending their original application in accordance with the Act.

The tenants confirmed that they did not have any witnesses to present. The tenants alleged that they believe the Witness has a conflict of interest as they will only get paid if the sale completes and will say anything to benefit themselves.

Responses by both parties

Counsel stated that the tenants have provided no evidence to bring the Witness into disrepute or otherwise impact their credibility. Counsel reaffirmed the Buyers have a good faith intention to occupy the rental unit as their own for their young family and that the landlord has provided sufficient evidence to support the same.

The tenants claim that the evidence submitted by the landlord are "lies" as the August 9 document is an attempt to remove and addendum dated July 8. The tenant referred to Page 4 of 7 of the Contract and states that before the amendment the original possession date was November 4, 2022 and that it has now changed since the tenants disputed the 2 Month Notice. The tenant stated that vacancy is not just a warranty but that it is a condition of the Contract as the sale has not completed due to the rental home not being vacant. The tenants allege that the landlord is playing "word games". Counsel responded to the tenant by clarifying that the tenant is confusing a condition of sale and

that the Contract has been crystalized and that a warranty simply means that any violation could result in “damages”. Counsel reminded the tenants that the Contract remains live and if the arbitrator was to accept the argument of the tenant, then no 2 Month Notice could ever be valid if tenants refused to vacate the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

November 2 Month Notices – I will focus my analysis on the November 2 Month Notices as I have already cancelled the October 2 Month Notices for not complying with section 52 of the Act, which is to be on the approved form and they were not. As such, all October 2 Month Notices are cancelled and are of no force or effect.

Regarding the November 2 Month Notices, I find they are all on the current form, are signed and dated and meet the requirements of section 52 of the Act as a result. In addition, I find the tenants disputed the November 2 Month Notices within the 15-day timeline provided under section 49(8)(a) of the Act as I find the tenants amended their respective joiner applications as permitted under the Act.

The reason indicated on the November 2 Month Notices is:



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.

I have carefully considered all documentary evidence presented and the testimony presented and find that I disagree with the tenants that the landlord and Counsel have presented “lies”. In fact, I find the landlord’s documentary evidence to be consistent and supportive of the Witness testimony, which I afford significant weight as I find that the Witness has confirmed that their clients, the Buyers, do intend to occupy the home for their young family and have intended to do so since submitting the initial Contract. I also find that amending the possession date to be a routine process where parties have the right to dispute a 2 Month Notice and the Buyers will await the determination of the RTB dispute resolution process to determine if the 2 Month Notice will be upheld before the possession date. In addition, I find that all subjects have been removed from the Contract based on the documentary evidence before me.

Given the above, I find the landlord has provided sufficient evidence to support that all four November 2 Month Notices are valid and have been issued in good faith. I find there is no ulterior motive proven by the tenants and that a 2 Month Notice exists under the Act for situations just like the matter before me, where buyers of a residential property intend in good faith to occupy a home that is tenanted prior to the completion date and where a 2 Month Notice has been requested to be issued by the seller.

Therefore, **I dismiss** all four joined tenant applications to cancel the November 2 Month Notices. **I uphold** all four November 2 Month Notices and find that they are enforceable. Section 55 of the Act states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52** *[form and content of notice to end tenancy]*, and

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and considering that I find the four November 2 Month Notices comply with section 52 of the Act, I find that the landlord is entitled to an order of possession effective **February 28, 2023 at 1:00 p.m.** I find the tenancy ends on February 28, 2023 at 1:00 p.m., which is the effective vacancy date listed on the November 2 Month Notices.

As the four applications have failed, I decline to grant any filing fees, although three of the four applications had their filing fees already waived.

Conclusion

All four joiner applications to cancel the November 2 Month Notices are dismissed without leave to reapply.

The November 2 Month Notices are upheld.

The landlord has been granted an order of possession effective February 28, 2023 at 1:00 p.m. The tenancy is ordered to end on that date and time pursuant to section 55 and 62(3) of the Act.

The order of possession must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenants are reminded that they could be held liable for all costs to enforce the order of possession if they fail to vacate by February 28, 2023 at 1:00 p.m. This includes all court costs, bailiff fees and other related costs.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 18, 2023

Residential Tenancy Branch