



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 for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 24, 2019 (2 Month Notice) and to recover the cost of the filing fee.

The tenant, a witness for the tenant who was not called to testify, LK, the landlord, an agent and translator for the landlord, HW (agent) and counsel for the landlord, AR (counsel) attended the teleconference hearing. All parties, except for the witness who was not called, and 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 gave affirmed testimony, counsel made submissions, and everyone was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties did not have any witnesses to present at the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to those participating.

Neither party raised any concerns regarding the service or receipt of documentary evidence. I find the parties were sufficiently served as required by the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?
- If no, should an order of possession be granted?

Background and Evidence

A copy of the most recent tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 1, 2022 and converted to a month-to-month tenancy after December 31, 2022. Monthly rent is \$1,980 per month and is due on the first day of each month.

The parties agreed that the landlord served a 2 Month Notice on the tenant dated August 30, 2022. The effective vacancy date is listed as November 30, 2022, which I will address later in this decision. The reason listed on 2 Month Notice states as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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.

☐ The landlord or the landlord's spouse

☒ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ 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.

☐ 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.

☐ The tenant no longer qualifies for the subsidized rental unit.

Purchaser Information: (complete only if providing this Notice to a purchaser)

The tenant filed their application to dispute the 2 Month Notice on August 31, 2022. In the tenant's application, they write as follows:

On August 29, 2022 after the downstairs tenant gave their move out notice to H ■ W ■ (Property agent), I contact her via text to ask about the new rent price as one our friend is looking for place to move in, H ■ (the agent) did not respond my text. on August 30, 2022 I called H ■ sometime afternoon to have a chat about rent price. She told me that the owner doesn't want to rent downstairs

unit again as he wants to sell the property! and she will sent me my moving out notice too.

[reproduced as written]

Counsel referred to the landlord's statutory declaration which reads in part as follows:

I, S [REDACTED] L [REDACTED] care of [REDACTED] Vancouver, British Columbia,
DO SOLEMNLY DECLARE THAT:

1. I, as landlord, entered into a residential tenancy agreement as to [REDACTED] North Vancouver, B.C. (the "Rental Unit") with P [REDACTED] Y [REDACTED] as tenant, for occupancy of the Rental Unit from June 1, 2020 to May 31, 2021, and for a month-to-month tenancy thereafter.
2. Prior to August 30, 2022 I determined that I wished to regain possession of the Rental Unit so that my wife and I can occupy it. I expect we will be joined, somewhat later, by our son and our daughter, and by my wife's mother.
3. I caused my agent, H [REDACTED] W [REDACTED] to deliver to my tenant a Notice to Vacate dated August 30, 2022 calling on my tenant to move out of the Rental Unit on November 30, 2022 so that my son can occupy it.
4. The tenant has not moved out.
5. Since the Notice to Vacate was delivered to my tenant my wife and I have decided to occupy the Rental Unit. Our son will join us later as will our daughter and, probably, my wife's mother.
6. I seek an order of possession of the Rental Unit so that my wife and I can occupy it as I intend.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

The landlord testified they are their wife are coming to the rental unit first approximately one month after receiving possession back of the rental unit as they will have to pack up their furniture as they are currently in Hong Kong. Counsel confirmed that the landlord was calling from Hong Kong into the hearing.

The landlord was asked about their children as the 2 Month Notice states the child of the landlord or landlord's spouse. The landlord testified that May or June of this year, their son will be finished studying and plans to move to the home. The landlord also stated that his daughter will be finished studying next year and plans to move to the home.

The tenant asked the landlord where their children were studying, which counsel objected to as it was not relevant. The question was permitted as I advised counsel that the question is relevant given that the landlord listed the reason on the 2 Month Notice as their child and not the landlords moving into the property. The landlord stated that their children are studying in Edmonton and Toronto, both within Canada.

The tenant testified that they were advised by the agent the night before being served with the 2 Month Notice that due to mortgage rate increases, that the landlord needed to sell the rental property as the rent was not covering enough. The tenant was confused why the 2 Month Notice listed the child/children of the landlord, which I will address later in this decision.

The agent was asked if the landlord planned to sell the property, and the agent confirmed that they were thinking of selling the property but that their decision changed when they could not find something comparable in the housing market.

The rental unit was described as the lower three bedrooms, while the upper portion of the home also has three bedrooms. The home has a total of six bedrooms. Counsel stated the size of the lower rental unit was not relevant, as the rental unit is not a legal rental unit. I will address this later in my decision.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find the tenant filed their application on time, which was within 15 days of being served the 2 Month Notice. The 2 Month Notice is dated August 30, 2022 and the tenant applied the next day to dispute the 2 Month Notice on August 31, 2022.

I find the effective vacancy date listed on the 2 Month Notice automatically corrects under section 53 of the Act as the tenancy agreement was a fixed-term tenancy, which did not convert to a month-to-month tenancy until after December 31, 2022. Section 53 applies and states in part as follows:

Incorrect effective dates automatically changed

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.**
[emphasis added]

Based on the above, I find the earliest effective vacancy date would be December 31, 2022. In addition, when a tenant disputes a 2 Month Notice on time, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice and call into question the “good faith” requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

Given the evidence before me from the tenant that the agent advised the tenant that the landlord was planning to sell the property, I find the tenant has raised the issue of good faith. I have carefully considered all of the evidence and testimony before me and agree with the tenant that the 2 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. I make this finding as I find that the agent did not dispute the tenant’s testimony that indicated that they were told the day before the 2 Month Notice was issued, that the landlord planned to sell the rental unit by the agent.

While the landlord did state that their son intends to move to the rental unit in either May or June of this year with their daughter moving in next year, I find that the testimony was vague as no specific dates of a move were provided such as the exact date the schooling ends for either child. Also, I find that vague testimony is not enough to end a tenancy. In addition, I find the landlord confirmed that they intend to occupy the rental unit first **before their children and that the landlord failed to indicate that as a reason on the 2 Month Notice.** Therefore, I find the landlord has provided contradictory evidence indicating that they intend to occupy the rental unit before their children intend to occupy the rental unit.

Consequently, I **cancel** the 2 Month Notice for two reasons, firstly I find that the reason stated was contradictory to the main reason stated by the landlord during the hearing and secondly, that the tenant has provided sufficient evidence to support that the 2

Month Notice was not issued in good faith, which was a discussion with the agent about a sale the night before the 2 Month Notice was issued. The 2 Month Notice is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant a one-time rent reduction in the amount of **\$100** in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

I afford no weight to counsel's submission that the rental unit is "not legal" as the landlord's have been renting it to the tenant since January 1, 2022.

Conclusion

The tenant's application is successful. The 2 Month Notice is cancelled.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction in the amount of \$100 as indicated above for the filing fee.

This decision will be emailed to both parties.

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 20, 2023

Residential Tenancy Branch