



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- disputing a Two Month Notice to End Tenancy for Landlord's Use dated August 17, 2022 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Landlord's agents SJ and WL attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 9:43 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord, the Landlord's agents, and I were the only ones who had called into the hearing.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Landlord's Name

The Landlord confirmed that her name is MJ not JM as initially described on this application. I have corrected the Landlord's name accordingly.

Preliminary Matter – Service of Dispute Resolution Documents

SJ acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and evidence (collectively, the "NDRP Package") on behalf of the Landlord. Based on SJ's testimony, I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

SJ testified that the Landlord's documentary evidence was sent to the Tenant via registered mail on December 31, 2022 (first of two tracking numbers referenced on the cover page of this decision). Tracking records show that the package was delivered on January 13, 2022. As such, I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88(c) of the Act.

Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant did not attend this hearing for the Tenant's own application while the Landlord and the Landlord's agents duly attended. As such, I directed that the hearing continue in the absence of the Tenant.

Issues to be Decided

1. Is the Tenant entitled to cancel the Two Month Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on August 1, 2018 and is month-to-month. Rent is \$2,994.00 due on the first day of each month. The Tenant paid a security deposit of \$1,475.00 which is held by the Landlord.

A copy of the Two Month Notice has been submitted into evidence. The Two Month Notice is signed by the Landlord and has an effective date of October 31, 2022. It states that the rental unit will be occupied by the “landlord or the landlord’s spouse”. SJ confirmed that a copy of the Two Month Notice was sent to the Tenant via registered mail on August 17, 2022 and provided a tracking number in support (second of two tracking numbers referenced on the cover page of this decision). Tracking records indicate that this package was delivered on August 19, 2022.

SJ testified the Tenant’s furniture and belongings are still in the rental unit. SJ testified he was told by the Tenant that the Tenant wasn’t living at the rental unit, but will return to collect his belongings. SJ stated that they consider the rental unit to be occupied by the Tenant because the Tenant’s belongings are still there. SJ testified the last time the Tenant paid rent was in November 2022.

The Landlord testified she wants to reclaim the rental unit so she can move in with her boyfriend. The Landlord stated that she and her boyfriend are getting married in August of this year. The Landlord submitted a partially redacted copy of her wedding contract into evidence.

The Landlord explained she currently lives in a one-bedroom apartment, but would like to move into the rental unit which is a five-bedroom house. The Landlord testified she and her boyfriend will need more space for starting their family and having a baby. The Landlord testified both her parents and her boyfriend’s parents will also be coming from abroad this year so they will need more space.

Analysis

1. Is the Tenant entitled to cancel the Two Month Notice?

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which states:

Form and content of notice to end tenancy

- 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.

I have reviewed the Two Month Notice and find that it complies with the requirements set out in section 52 of the Act.

I find the Tenant was served with a copy of the Two Month Notice in accordance with section 88(c) of the Act on August 19, 2022.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. Therefore, the Tenant had until September 3, 2022 to dispute the Two Month Notice. Records indicate the Tenant submitted this application on August 26, 2022. I find the Tenant made this application within the time limit prescribed by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to justify, on a balance of probabilities, the reasons set out in the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states that to "occupy" under section 49 of the Act means "to occupy for a residential purpose." The result is that a landlord can end a tenancy under section 49(3) of the Act if the landlord "intend[s] in good faith to use the rental unit as living accommodation or as part of their living space".

In this case, I accept the Landlord's undisputed testimony that her intention is to move into the rental unit with her boyfriend, since they are planning to get married this year and start a new family. I further accept the Landlord's undisputed testimony that she

intends to move into the rental unit because it is much larger than her current living accommodation.

I conclude the Landlord has established the grounds stated in the Two Month Notice and good faith for ending the tenancy. Accordingly, I dismiss the Tenant's claim to cancel the Two Month Notice without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) 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.

Having found the Two Month Notice to comply with section 52 and having dismissed the Tenant's claim to cancel the Two Month Notice, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

As the effective date of the Two Month Notice has already passed, I grant the Landlord an Order of Possession effective two (2) days after service upon the Tenant.

3. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in disputing the Two Month Notice. I decline to award the Tenant recovery of the filing fee under section 72(1) of the Act.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with

this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 17, 2023

Residential Tenancy Branch