



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property (the "Two Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover the filing fee?

Background & Evidence

This tenancy began February 27, 2019 and the current monthly rent is \$1522.50. The rental unit is a two-bedroom ground floor unit. The landlord and his family reside on the upper floor.

The landlord served the tenants with a Two Month Notice on July 27, 2022. The Two Month Notice had an effective date of September 30, 2022. The grounds for issuing the Two Month Notice is the landlord's parents intend to occupy the rental unit.

The landlord's agent submits that landlord's parents have been here living with the landlord since October 1, 2022. Their tickets were purchased after the Two Month

Notice was issued to the tenants. Copies of the one-way airline tickets were submitted as evidence. The landlord's parents were previously living with their son in Alberta. Due to the weather conditions and also need for cancer treatments, the parents are moving to British Columbia for their retirement.

The tenants are disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenants testified that the landlord used the same excuse previously to evict another tenant back in 2000. The tenants submitted text message correspondence from the other tenant as evidence. The tenants argue that the landlord's parents only stay here seasonally as they did so back in 2021 as well at which time, they had no issue staying with the landlord. The tenants also point to an incident in July 2022 regarding a washing machine not working which they feel triggered the landlord to issue the Two Month Notice.

In reply, the landlord's agent submits that the previous tenant was issued a Two Month Notice for the landlord to occupy the rental unit himself and the landlord and his family have been occupying the rental unit since. The Two Month Notice is now for the landlord's parents to occupy the ground floor unit, so the two matters are unrelated. The landlord's parents did reside here previously with the landlord, but they were not here permanently at the time and went back as they were not happy with the lack of space and having to climb stairs.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find that the evidence supports that there is a good faith intention for the landlord's parents to occupy the rental unit. All though the tenants made allegations of bad faith, I find the tenants failed to establish any basis for the allegations. The tenants provided insufficient evidence that the landlord used the same reason to evict a previous tenant. A copy of the previous Two Month Notice was submitted as evidence nor was there sufficient evidence that the same ground was used in that case. I accept the testimony of the landlord's agent and find that previous Two Month Notice was for the landlord to occupy the upper portion of the house himself which he has since been doing. Additionally, I find there to be insufficient evidence that the washing machine issue was another basis for an ulterior motive on the landlord's part. Again, there was no evidence which would suggest this to be the case.

The landlord submitted evidence of one-way plane tickets demonstrating the landlord's parents have been here since October 1, 2022. I accept the landlord's submission that the parents need their own space on the ground floor and they intend to occupy this space permanently.

The tenants' application to cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the filing fee paid for this application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on January 31, 2023**. Should the tenant(s) fail to comply with this Order, this Order may be filed 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: January 12, 2023

Residential Tenancy Branch