



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act;
2. More time to dispute the notice pursuant to Section 66 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's son, the Tenant, and the Tenant's son attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice served by attaching a copy to the Tenant's door on August 1, 2022, Tenant confirms receipt, deemed served on August 4, 2022; and,
- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on August 19, 2022, Canada Post Tracking Number on

cover sheet of decision, Landlord's son confirmed receipt, deemed served on August 24, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. Is the Tenant entitled to more time to dispute the notice?
3. If the Tenant is not successful, is the Landlord entitled to an Order of Possession?
4. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began in December 2012. Monthly rent is \$2,200.00 payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse's child will occupy the unit. The effective date on the Two Month Notice was September 30, 2022.

The upstairs portion of the house where the Tenant resides has four bedrooms, two and a half bathrooms, there is a large family room, living room, dining room and kitchen. The Landlord's son stated it has a covered back patio and an open front patio.

The Landlord's son says he has been living with his father, but now his father wants him to live on his own. The Landlord's son says he has a girlfriend who has a 16-year-old child, and he said they can start a family in the Landlord's other house. He said he has clothes packed ready in a bag. He said he is ready to go and move in, he does not have a lot of stuff. The Landlord's son said he is divorced and has a child himself. The Landlord's son's girlfriend did not testify.

The Landlord's son said he lived in the two-bedroom basement suite in the home from 2009 to 2013. He stated he likes the area, he has lots of friends and family nearby. He wants to restart his life.

The Tenant testified that this is the second notice to end tenancy served by the Landlord. The first file which is included on the cover sheet of this decision was decided on March 31, 2022 in the Tenant's favour. The Tenant believes that it is the Landlord's intention to evict him so that he can increase the rent amount for the rental unit from other tenants.

The Tenant lives in the rental unit with his wife and three of his children. He questions the good faith of the Landlord about the eviction.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

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;*

...

"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

...

(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.*

...

(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*

...

The Tenant was deemed served with the Two Month Notice on August 4, 2022. I find the Two Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on August 2, 2022 which is within 15 days after receiving the Two Month Notice. The Tenant applied for more time to dispute the Two Month Notice which he did not need. I dismiss the Tenant's claim for more time to dispute the notice as it was not needed.

The Tenant made a claim that he did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard:

B. Good Faith

In Gichuru v. Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

The Landlord's son testifies that he plans to move into the rental unit with his girlfriend and her 16-year-old child. The Landlord's son said he also has a child and him and girlfriend plan to start their own family together. The Landlord's son's girlfriend did not attend this hearing to provide testimony corroborating the Landlord's son's statement about them planning to move in together and start their own family. The Tenant disbelieves that the Landlord has the good faith intention to do as he has stated in the Two Month Notice.

It is the Landlord's burden to prove on a balance of probabilities that he intends to do what he has stated in the Two Month Notice. I find I cannot rely on the Landlord's son's testimony in the absence of more evidence to support it. I consider the Landlord to have

submitted no evidence to support the Landlord's son's testimony about the grounds for the Two Month Notice. I find the lack of supporting evidence concerning considering the previous file on which the Tenant was successful. Accordingly, I cancel the Landlord's Two Month Notice, and the tenancy will continue until ended in accordance with the Act.

For the benefit of the Tenant, he may wish to discuss with an Information Officer at the RTB the options available to him about Section 51 of the Act regarding: ***Tenant's compensation***, which comes into play when the Landlord does not fulfil the stated purpose in their notice. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is granted.

The Tenant's request for more time to apply for dispute resolution is dismissed.

The Tenant may withhold \$100.00 from next month's rent to recover his application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 16, 2023

Residential Tenancy Branch