



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT; MNDCT, DRI, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute.

On September 13, 2022 the tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated August 31, 2022 (the Two Month Notice); and
- the filing fee.

On December 9, 2022 the tenant applied for:

- compensation for monetary loss or other money owed,
- dispute of a rent increase above the amount allowed by law; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

During the hearing, the landlord referred me to a contract submitted as evidence. As the landlord confirmed she did not serve a copy of the contract on the tenant, I will not accept it as evidence. Neither party raised an issue regarding service of any other hearing materials.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's claims for monetary compensation and dispute of a rent increase.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began August 30, 2020 under a different landlord; the parties signed a new tenancy agreement after the unit was sold to the current landlord. Rent is \$4,600.00, due on the first of the month; and the tenant paid a security deposit of \$2,300.00, which the landlord holds in trust.

The landlord testified they served the Two Month Notice on the tenant by posting it to the door on August 31, 2022; the tenant testified she received it on September 1, 2022.

A copy of the Two Month Notice was submitted as evidence. It is signed and dated August 31, 2022 by the landlord, gives the address of the rental unit, states an effective date of October 31, 2022, states the grounds for the Notice, and is in the approved form. The Notice indicates the tenancy is ending because the landlord or the landlord's spouse will occupy the unit.

The landlord testified that she bought the unit in 2021, has been renting another place, and now wants to move into the house as she has no other place to stay.

The tenant testified that the unit has been sold to new owners, and the landlord wants the property vacant to give it to the new owners. The tenant submitted as evidence a

text exchange between the parties. The original texts are not in English, and are accompanied by a translator's statement, which says they were translated by a certified translator who is a member in good standing of the Society of Translators and Interpreters of British Columbia, and provides a member number. The texts include a photo of a realtor's sign, and the tenant telling the landlord she has just seen the sign, and asking the landlord if the house has been sold. The landlord responds that the transaction will be concluded at the end of October. A July 5, 2022 photo of the realtor's sign was submitted as evidence; it states "SOLD" across the top of the sign.

In the text exchange, the landlord stated that the parties had mutually agreed that the tenant would vacate the unit on August 30, and the tenant stated that the landlord must provide formal notice. The landlord stated: "I need time to tidy up the house before handing it over." The tenant testified the texts were from around August 15, 2022; looking at the evidence, it appears the texts referenced above are from July 5 to August 15, 2022.

The landlord testified that at the end of July she told the tenant she wanted to move into the house, and submitted that the translation in evidence was inaccurate, and should state: "I tidy up the house a bit, then I move in." The landlord did not dispute the translation of the text stating that on July 6, 2022 she told the tenant the sale of the house will be concluded at the end of October 2022.

The tenant submitted as evidence a July 5, 2022 photo of a real estate billboard showing the subject property as part of a land assembly. The tenant testified that as the landlord must deliver the property to the new owners, the landlord will not be able to stay in the unit for six months.

The tenant testified that the landlord treated the house as an investment property, not as a place to live. The tenant submitted that the landlord purchased the unit without viewing the interior. The tenant submitted that the first time the landlord saw the interior of the house was on September 2, 2021, when she came to collect rent. The tenant said she knew the landlord had not previously seen the interior of the home because no inspection has been done. This was not disputed by the landlord.

The landlord stated she received an offer on the house in June 2022, and signed a contract, but that the deal is still not done. The landlord testified that the deal was delayed to February 28, 2023, and that she will be able to live in the house as there is a rent-back option in the contract, and the project will take a long time. The landlord

testified she can live in the unit until the new owners figure out what they will do with the land.

Analysis

Based on the testimony of the parties, I find the landlord served the Two Month Notice on the tenant by posting it to the door on August 31, 2022, and it was received by the tenant the next day. I find the landlord served the tenant in accordance with section 88 of the Act.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

The standard of proof in a dispute resolution 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.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that 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 Act or the tenancy agreement.

Section 49(3) of the Act states:

(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.

The Two Month Notice, dated August 31, 2022, indicates the tenancy is ending as the rental unit will be occupied by the landlord or the landlord's spouse.

However, the tenant has provided undisputed testimony that the landlord purchased the property without having seen the interior. I find it difficult to believe that a person who intends to live in a unit would purchase it without having seen the inside. The tenant submitted as evidence a text exchange from July 5 and 6, 2022 in which the tenant asked the landlord if the house has been sold, and the landlord replied: "The transaction will be concluded at the end of October."

Based on the preceding, I find on a balance of probabilities that when the landlord served the Two Month Notice on August 31, 2022, their intention was to sell the property, not occupy it.

The landlord has testified that she will be able to live in the unit for six months as there is a rent-back option in her sale contract. I find that the landlord has not acted in good faith by indicating on the Notice that she or her spouse will occupy the unit, because it appears the landlord's goal was to sell the unit, not to occupy it. I interpret the intent to occupy a unit as the intention to live there for the foreseeable future, not to serve the Notice with the intention of living there only long enough to avoid penalty.

I find that the landlord has not met the onus of proving the reason for the Two Month Notice, nor that they are acting in good faith.

Therefore, the Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application to dispute the Two Month Notice is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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: February 06, 2023

Residential Tenancy Branch