



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 0986305 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL MNDCT OLC PSF RR

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (Act) by the tenant to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property dated November 8, 2022 (2 Month Notice), for a monetary claim, for an order directing the landlord to comply with the Act, Regulation or tenancy agreement, for a rent reduction and for an order directing the landlord to provide services required as part of the tenancy agreement.

The parties and tenant advocate (advocate) attended the teleconference hearing. The participants gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties confirmed that they did not have any witnesses to present at the hearing.

The landlord confirmed that they received and reviewed the tenant's application and had the opportunity to review it prior to the hearing. The landlord testified that they did not submit any documentary evidence in response to the tenant's application.

Preliminary and Procedural Matters

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

The filing fee was waived for this application.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

Background and Evidence

The tenant testified that the tenancy began about 10 or 11 years ago, which the landlord did not dispute. The tenant testified that their current monthly rent is \$580 per month and due on the first day of each month.

The parties agreed that the landlord served the tenant with the 2 Month Notice on November 8, 2022. The tenant filed their application to dispute the 2 Month Notice on November 10, 2022. The effective vacancy date listed on the 2 Month Notice is February 1, 2023.

The 2 Month Notice indicates the following:

| Reason for this Two Month's Notice to End Tenancy (check the box that applies) | |
|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | 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. |
| <input checked="" type="radio"/> | The landlord or the landlord's spouse |
| <input type="radio"/> | The child of the landlord or landlord's spouse |
| <input type="radio"/> | The father or mother of the landlord or landlord's spouse |
| <input type="checkbox"/> | 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. |
| <input type="checkbox"/> | 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. |
| <input type="checkbox"/> | The tenant no longer qualifies for the subsidized rental unit. |

The landlord testified that they plan on moving from Surrey to Quesnel to live there as they have upcoming projects planned for that area that they need to oversee and have made arrangements with movers. The landlord stated that their parents have preferred shares in the numbered company and have ordered the landlord to take possession of the rental unit.

The advocate raised the issue of ads listed on a Facebook Marketplace for the specific building in which the tenant resides that are currently available. The landlord responded by saying it has to be on the first floor instead as they cannot make it to the third floor. The landlord was asked why they could not make it to the third floor and the landlord stated, "due to a knee injury". The landlord did not submit any documentary evidence to

support upcoming projects in the area or a knee injury, which I will address later in this decision.

The landlord testified that the market rent has gone up and “is not the main reason” for the 2 Month Notice and immediately changed their testimony to “it is not the reason” for the 2 Month Notice. The landlord stated that it takes time to make plans and is difficult to change things “on the fly”. The landlord stated that they have 90 units and have never issued a 2 Month Notice before.

The tenant complained of having no heat and bed bugs in the rental unit and the landlord replied that “that’s another reason I need to go into the unit for bed bugs as we did have bed bugs when the building was first purchased but over 1 to 1.5 years and \$30,000 spent and with inspections with pest control saying there were no problems two or three times”.

The tenant responded by stating that the landlord knows the tenant has no heat and that the tenant has been complaining about no heat for the past 1.5 years. The advocate stated that the tenant has heaters plugged in for heat in the mean time but claims that the 2 Month Notice has not been issued in good faith.

The landlord stated that they are able to chose a rental unit that has low rent as that is true for all units that are not currently being rented at market rent. The landlord stated that they plan to take care of any problems in the building and “keep an eye” on their building manager.

Analysis

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

The tenant disputed the 2 Month Notice on November 10, 2022, which is within the 15-day timeline provided for under section 49 of the Act to dispute a 2 Month Notice. When a tenant disputes a 2 Month Notice, 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 calls 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.

The landlord confirmed that they did not submit any documentary evidence. I find that by failing to submit any supporting documentary evidence of their upcoming projects and to support the existence of their knee injury that the landlord has failed to meet the burden of proof. Therefore, I find it is not necessary to consider the “good faith” requirement under the Act.

At the very least, I would have expected the landlord to have submitted a summary of their upcoming projects and to have included knee injury medical records in support of the need to have a rental unit on the first floor versus on the second or third floor of the rental building. Given the above, I cancel the 2 Month Notice due to insufficient evidence from the landlord as the landlord has the burden of proof in this matter.

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

Conclusion

The 2 Month Notice issued by the landlord is cancelled due to insufficient evidence. The tenancy shall continue until ended in accordance with the Act. 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: March 27, 2023

Residential Tenancy Branch