



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

On October 31, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

Both Tenants attended the hearing. The Landlord attended the hearing as well, with B.A. attending as an agent for the Landlord, and with T.F. simply observing the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of B.A. and T.F., provided a solemn affirmation.

Service of the Notice of Hearing package and documentary evidence was discussed, and there were no issues concerning service.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most recent tenancy agreement started on April 1, 2021, and that the tenancy was currently a month-to-month agreement. Rent was presently established at an amount of \$3,390.00 per month and was due on the first day of each month. A security deposit of \$1,650.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was served to the Tenants by hand on October 31, 2022. The reason the Landlord served the Notice is because "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)." As well, the Landlord checked off the box indicating that it would be "The landlord or the landlord's spouse" that would specifically be occupying the rental unit. The effective end date of the tenancy was noted as December 31, 2022, on the Notice.

Some submissions were made with respect to the Notice; however, the parties turned their minds to reaching a full and final settlement agreement. The parties were able to reach an agreement and I have recorded the terms of agreement by way of this Decision, and the Order of Possession that accompanies it.

Settlement Agreement

The parties raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the

parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties reached the following full and final settlement agreement during the hearing:

1. The Tenants will maintain possession of the rental unit until **May 31, 2023, at 1:00 PM.**
2. The Tenants must give up vacant possession of the rental unit on **May 31, 2023, at 1:00 PM.** An Order of Possession will be awarded to the Landlord for this date.
3. The Two Month Notice to End Tenancy for Landlord's Use of Property of October 31, 2022, remains live and in effect.
4. The Tenants may withhold May 2023 rent in the amount of **\$3,390.00**, which represents the one month's compensation owed because the Landlord served this Notice.
5. The Landlord shall not pursue any legal fees against the Tenants, outside of the jurisdiction of the Residential Tenancy Branch, for any legal fees that were incurred as a result of this dispute.
6. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of the dispute over the Notice.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of this full and final settlement of this dispute.

Conclusion

The parties reached a full and final settlement agreement in resolution of this dispute. I have recorded the terms of settlement in this Decision, and in recognition of the settlement agreement, the Landlord is provided with a formal copy of an Order of

Possession effective at **1:00 PM on May 31, 2023, after service of this Order** on the Tenants. Should the Tenants or any occupant on the premises 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: March 10, 2023

Residential Tenancy Branch