



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenants (hereinafter referred to as the “Tenant”) filed their Application for Dispute Resolution on December 6, 2022, to dispute the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek recovery of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 14, 2023.

Both parties (Tenant, Landlord KM, and Landlord BM) attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. On the basis of complete disclosure, I proceeded with the hearing. All evidence submitted by the parties receives my consideration herein.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I reviewed the basic terms of the tenancy agreement with both parties, as provided by the Tenant in their evidence. The Tenant moved in to the rental unit in 2019, and signed a renewal tenancy agreement in 2021. The Tenant pays \$2,200 per month as of the time of the hearing. The rental unit is one of two properties owned by the Landlord KM and the Landlord BM; both Landlord KM and Landlord BM signed the agreement as Landlords. The Landlord BM and the Landlord KM are legally separating.

The Tenant provided a copy of the Two-Month Notice in their evidence. The Landlord BM signed this document on November 24, 2022 for the end-of-tenancy date of January 31, 2023. The indication on page 2 was that the “rental unit will be occupied by the landlord”. The Landlord BM served this by registered mail that was returned to sender, and also by email on November 30, 2022.

The Landlord BM set out that they moved back to Canada from another country on March 25, 2023. Their initial move back was going to be January 30; however, they had to delay the move because of this dispute by the Tenant. The Landlord BM stated they “just wanted to live in Canada”, and the rental unit home is their primary residence.

The other Landlord KM set out that this was a surprise to them. The Tenant has lived in the rental unit “for years” and with no issues, the Landlord KM would prefer to not see the Tenant move out. The Landlord KM stressed that they pay mortgage for the rental unit property, so minus the income from the rental income, this would cause some hardship.

On the Tenant's Application, they stated:

Our tenancy agreement is with [Landlord KM] and [Landlord BM] as they are joint owners of the property. They are going through legal proceedings to divorce. [Landlord BM] is not acting in good faith, [Landlord BM] is doing this out of spite and [Landlord KM] does not want to evict us. We have been tenants at this property for a long time and [Landlord BM] moved to Australia a couple of years ago. Since then, [Landlord KM] has been the landlord, we send rent to [Landlord KM] and if anything comes up, it is [Landlord KM] we contact.

In the hearing, the Tenant set out that previously the Landlord BM stated they had no intention of returning to Canada. They were aware of the Landlord BM shipping their vehicles to Australia. The instruction to the Tenant from the Landlord BM was that the Tenant should deal with the Landlord KM only.

The Tenant is also aware of the Landlords' legal separation. In their mind, the Landlord BM is "doing this out of spite", without the Landlord KM's signature or consent. The service of this Two-Month Notice was the first notice the Tenant had that the Landlord BM was returning to Canada. The Tenant described the Landlord BM visiting unannounced to the rental unit in the week prior to this hearing.

While the Landlord KM stated they had no notice of the Landlord BM's intentions, BM countered to say they undertook communication on this via counsel in November 2022. The Landlord BM described the likely pending sale of either of these properties.

The Tenant stated their desire to remain as Tenant at this rental unit. They proposed that the tenancy should end only after the separation process is complete. They stated the Two-Month Notice is "illegal" because their tenancy agreement is with both Landlord KM and Landlord BM, not just one of them.

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The *Act* s. 55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the landlord's notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

I find the Landlord BM provided sufficient evidence in the form of testimony of their need to the rental unit. This includes their legal entitlement to it, excluding any other legal proceeding in their separation which was not in the record before me. The Landlord is not prevented from ending the tenancy for this reason, and I find the Tenant's submission that the Two-Month Notice requires both Landlord's signatures is speculative; there is no legal basis for that submission.

The Tenant presented this is a situation of bad faith, where the Landlord BM has ulterior motives. I find the Tenant did not show this to be the case to a sufficient degree to outweigh the evidence and testimony of the Landlord BM. The Tenant did not provide testimony or other evidence to show there was any communication with the Landlord that undermines the Landlord's stated intention on their need for the unit.

For these reasons, I uphold the Two-Month Notice issued on September 17, 2021 and find it was issued in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the landlord is entitled to an order of possession as the *Act* provides for.

The tenancy shall end with service of the Order of Possession. Because the Tenant was not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

I wish to make all parties aware of the provisions of the *Act*, those associated with a landlord ending a tenancy for their own use: the *Act* s. 51 authorizes a set amount of compensation to a former tenant where a landlord ends the tenancy for their own use, then does not accomplish the stated purpose for ending the tenancy for at least 6 months' duration. That set amount of compensation is the equivalent of twelve months' rent amount.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord BM and the Landlord KM effective **two days after service of this Order** to the Tenant. The Landlords must serve this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, the Landlords may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

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

Dated: April 19, 2023

Residential Tenancy Branch