



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated December 14, 2022; and to recover his \$100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Tenant had submitted some photographs earlier that morning, which I advised him was too late for me to consider, pursuant to the Rules.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on in approximately 2019, with a monthly rent of \$900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$450.00, and no pet damage deposit.

The Two Month Notice was signed and dated December 14, 2022, and it has the rental unit address. The Two Month Notice was served in person on December 14, 2022, with an effective vacancy date of March 1, 2023. It was served on the grounds that the rental unit will be occupied by the landlord or the landlord's close family member (the child of the Landlord and the child's spouse and baby).

The Landlord explained why he issued the Two Month Notice to the Tenant:

I'm a father and a grandfather living on a farm. My sons grew up on the farm. I had cancer last year and almost died, and when you almost die, you know that money is not the most important thing in life. To be able to have my children and grandchildren living on my property is a holy grail to me. I told [the Tenant] this when I verbally asked him to leave eight months ago. There's no lying, there's no subterfuge. I've never raised your rent. All I want is my family here.

The Tenant said he did not believe the Landlord's son will be moving into the rental unit. The Tenant said:

I don't believe his son wants to move into this particular cabin. There is another cabin at the bottom, one is empty and the other is rented to his twin brother, who also has a baby. There are two dwellings down there and one is empty. The twin brother wanted to move [here] last year from [another city]. There's a place available on the property. So, it doesn't add up to live in my cabin.

The reason given is not true. The reason is whatever they want to do with my place, make a BnB or rent it for more to someone else. I don't believe his son wants to move here.

The Landlord addressed the Tenant's assertion that there is another building on the property that is empty. The Landlord directed me to photographs he submitted which show a large area in a building with a lot of musical instruments and a mixing board in the area. The Landlord said that this is a music studio with an office upstairs in which the Landlord's other son, C.A. works. The Landlord said this is not empty and it is not an appropriate place to live with and raise a small child.

The Tenant referred me to photographs he had submitted earlier on the day of the hearing; however, I advised him that he was supposed to serve this evidence to the Landlord and submit it to the RTB at least 14 days prior to the hearing, pursuant to the Rules. As such, I told him that I could not consider them, because they were submitted too late.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that 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.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that both Parties' testimony in the hearing indicates that the Landlord already lives on the residential property, that another son, C.A., lives there, and that the Landlord

intends to have his other son and wife and baby take over the rental unit. I find the Landlord's testimony was credible and compelling, versus the Tenant's mere statement that he does not believe the son will move to the property. The Tenant did not provide a viable reason for believing this. I find his statement about the other "empty" unit on the property is not correct, as the Landlord explained that the other property is used as a music studio and an office. It is not an appropriate space for a young family with a baby.

Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51 (2), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an **Order of Possession** for the rental unit to

the Landlord **effective two days after service of this Order** to the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 1, 2023

Residential Tenancy Branch