



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: CNL OLC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 14, 2023 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The parties and counsel attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Counsel was not affirmed as counsel is an officer of the court. Counsel was permitted to make submissions and respond to all participants.

As neither party raised any concerns regarding the service of the application or documentary evidence and that both parties confirmed that they had the opportunity to review evidence served upon them, I find the parties were sufficiently served in accordance with the Act.

No service issues were raised. As a result, I find there are no service issues before me.

Preliminary and Procedural Matters

At the outset of the hearing, counsel confirmed that the person who signed the tenancy agreement is one of 3 co-owners of the property. A Title Search (Title) of the property was submitted in support of this information. The tenant was asked through their translator on many occasions if they knew YY, who signed and issued the 2 Month Notice. Their first response was that they did not know YY, and then later contradicted

themselves by stating that that YY would come around not more than once per month and that the tenant could not recall who they paid the security deposit to. The landlord confirmed that YY was paid the security deposit by the tenant. The tenant then later contradicted themselves again by claiming they did not know YY at all. The tenant and their translator were informed during the hearing that I did not find them credible due to the contradictory testimony, which I will address later in this decision.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Should the filing fee be granted?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. As the tenancy agreement was not in English, counsel supplied a certified copy of the tenancy agreement translated into English. A one-year fixed-term tenancy began on March 4, 2021, and converted to a month-to-month tenancy after March 4, 2022. Monthly rent in the amount of \$1,250 originally was due on the first day of each month and was increased during the tenancy.

The 2 Month Notice was disputed on January 22, 2023, which is within the 15-day timeline provided for under the Act. The effective vacancy date is listed as March 15, 2023, which automatically corrects under the Act, which I will address later in this decision. The reason listed on the 2 Month Notice is states as follows:

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 QC and YY currently reside with them because the landlord's husband was unable to secure their permanent residence status (PM Status) until

November 30, 2022. To support the PM Status update, the landlord submitted a copy of their husband's plane ticket in evidence.

The tenant claims that the landlords have additional properties, which the landlord, QC and YY vehemently denied. The tenant admitted that they did not submit any evidence for my review that supports that the landlord, QC or YY own other properties that they could reside in other than the rental unit.

Analysis

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

2 Month Notice to End Tenancy for Landlord's Use of Property – I find the tenant disputed the 2 Month Notice within the 15-day timeline provided under section 49(8)(a) of the Act and as noted above. The reason indicated on the 2 Month Notice was for the landlord or the landlord's spouse and under the Act, a co-owner of the rental unit meets the definition of "landlord" under section 1 of the Act.

As indicated above, I find the tenant and their agent not to be credible as their testimony was contradictory and accordingly, I afford more weight to the testimony and documentary evidence from the landlord. I also find the tenant's allegation that the landlord, QC or YY own more properties is not supported by any documentary evidence to support such a statement and was denied by the landlord, QC and YY.

In addition, the Act provides a landlord to end a tenancy in this method. Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid. Therefore, I **dismiss** the tenant's application to cancel the 2 Month Notice and I **uphold** the 2 Month Notice. Section 55 of the Act states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and considering that I find the 2 Month Notice complies with section 52 of the Act as it was signed and dated and included all the required information under the Act, I find that the landlord is entitled to an order of possession effective **May 31, 2023 at 1:00 p.m.** I find the tenancy ended on March 31, 2023, which is the corrected effective vacancy date listed on the 2 Month Notice. Under section 53 of the Act, incorrect effective vacancy dates automatically correct. I find March 15, 2023 was incorrect as rent is due on the first day of each month so March 31, 2023 is the corrected date.

I find the tenant has paid for use and occupancy for May 2023. The landlord will owe the tenant 1 month of rent for compensation for issuing the 2 Month Notice if they have not compensated the tenant already.

As the tenant's application was not successful, **I decline to grant** the tenant the recovery of the filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed. I uphold the 2 Month Notice issued by the landlord. The landlord has been granted an order of possession effective May 31, 2023 at 1:00 p.m.

The tenancy ended on March 31, 2023. The order of possession must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenants are reminded that they could be held liable for all costs to enforce the order of possession if they fail to vacate as ordered. This could include all court costs and bailiff fees.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant.

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 15, 2023