



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49 of the Act
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlord QK appearing with witness MK. The tenants AM and GP also appeared.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated January 5, 2023 with an effective date of March 31, 2023. The landlord confirmed receipt of the dispute notice and the tenant’s materials. Service for these materials complies with sections 88 and 89 of the Act. The landlord acknowledged that they did not serve their materials on the tenants, therefore I will not consider the landlord’s materials pursuant to RTB Rules of Procedure 3.16 which requires that the respondent prove service of the documents.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenants? Is the landlord entitled to an order of possession?
2. Are the tenants entitled to an order requiring the landlord to comply with the Act, regulations or tenancy agreement?
3. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on June 15, 2020. Rent is \$2,850.00 per month due on the 15th of the month. The landlord holds a security deposit of \$2,850.00. The tenants still occupy the rental unit.

The landlord testified that she served the Two Month Notice on the tenants as she requires the rental unit for her own use. She currently lives with her family but was married in February 2023 and she and her partner, along with her brother and his partner wish to occupy the rental unit. The landlord's brother who wished to occupy the rental unit as well attended as a witness.

The tenants testified that they did not believe that the landlord was going to occupy the rental unit as she stated. The tenants stated that the landlord gave inconsistent statements as to why she required the rental unit.

Analysis

RTB Rules of Procedure 6.6 states, "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 tenants apply to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenants.

I find that the landlord has established based on a balance of probabilities that she wishes to occupy the rental unit. I find that her explanation, a recent marriage, is a

reasonable explanation as to why she wishes to occupy the rental unit which she testified she owns. The onus is on the landlord to establish that they will occupy the rental unit, however I have also considered that the tenants have provided no credible evidence to show that the landlord does not intend to occupy the rental unit as stated.

I therefore dismiss the tenants' application to cancel the Two Month Notice. The Two Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the Two Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective May 31, 2023 at 1:00 pm.

As the tenants were not successful in their claim they are not entitled to recover the \$100.00 filing fee for the application.

The tenants are entitled to receive compensation equivalent to one month's rent based on section 51 of the Act.

Conclusion

The landlord is granted an order of possession which will be effective May 31, 2023 at 1:00 pm. The order of possession must be served on the tenants. The order of possession may be filed in 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: May 17, 2023

Residential Tenancy Branch