



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OLC, FFT
 OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on February 13, 2023. The Tenant applied to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property dated February 8, 2023, for an order that the Landlord comply with the Act, and to recover the filing fee for their application.

The Landlord’s Application for Dispute Resolution was made on May 10, 2023. The Landlord applied to enforce a Two Month Notice to End Tenancy for the Landlord’s Use of the Property dated February 24, 2023, and to recover the filing fee paid for their application.

The Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters - *Related Issues*

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as one other issue. I find that this other issue is not related to the Tenant's request to cancel the Notice. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenant's claims for an order that the Landlord comply with the *Act*.

Preliminary Matters – *Two Notices*

It was noted at the beginning of these proceedings that the Landlord had issued two Notices within 17 days of each other. Both Notices were form number RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property.

The first Two Month Notice to End Tenancy for the Landlord's Use of the Property was issued on February 8, 2023, which recorded the name of only one of the two Tenants listed on the Tenancy Agreement signed between these parties.

The second Two Month Notice to End Tenancy for the Landlord's Use of the Property was issued on February 24, 2023, which recorded both the names of the two Tenants listed on the Tenancy Agreement signed between these parties. The February 24, 2023, Notice also included a handwritten note located on page two of the Notice which stated the following:

“New notice given under an abundance of caution for the purpose of adding R.M.’s name to the notice current dispute number 910100562”

[Reproduced as written, name appreciated]

It was submitted by the Landlord’s legal counsel that the Tenants failed to dispute the February 24, 2023, Notice and that they should be conclusively presumed to have accepted that the tenancy ended on the effective date of the notice dated February 24, 2023.

The Tenants acknowledged receipt of the notice dated February 24, 2023, and submitted that they did not file to dispute that Notice based on what the Landlord had written, stating that they believe that both notices were disputed under this application.

I have reviewed both Notices submitted by these parties and find that the Landlord had created some confusion when they issued two separate RTB-32 Two-Month Notice to End Tenancy for the Landlord’s Use of Property for this tenancy, during the month of February 2023. I also find it reasonable that there was some confusion as to whether or not the second Notice needed to be disputed by the Tenants given that the Landlord clearly recorded on the second Notice, that it was “for the purpose of adding” the second Tenant to the Notice dated February 8, 2023.

In this case, I find it appropriate to amend the Tenants’ application during these proceedings to include a request to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property dated February 24, 2023, pursuant to section 4.2 of the Residential Tenancy Branches Rules of Procedure.

Issues to be Decided

- Should the Notice to End Tenancy dated February 8, 2023, be cancelled?
- Should the Notice to End Tenancy dated February 24, 2023, be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee for this application?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on July 1, 2020, as a one-year fixed-term tenancy, that rolled into a month-to-month tenancy at the end of the initial fixed term. That rent in the amount of \$2,500.00 is due on the first day of each month, and that the Tenants had paid the Landlord a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit at the beginning of the tenancy. The Tenant and the Landlord each submitted copies of the tenancy agreement into documentary evidence.

The parties agreed that the first Notice was served on February 8, 2023, by posting it to the front door of the rental unit. The Notice indicated that the Tenants were required to vacate the rental unit as of April 30, 2023. The Tenant and the Landlord each submitted copies of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The parties agreed that the second Notice was served on February 24, 2023, by posting it to the front door of the rental unit. The Notice indicated that the Tenants were required to vacate the rental unit as of April 30, 2023. The Tenant and the Landlord each submitted copies of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they are reclaiming the rental property for their son's use. The Landlord's son attended the hearing and provided affirmed testimony that they and their partner intent to move into the rental property.

The Tenants testified that they are being harassed by the Landlord and that the Landlord is doing everything to get them to leave. The Tenants submitted that they had a previous hearing with the Landlord, to dispute a one-month Notice to end their tenancy and that the Landlord's notice was cancelled as a result of those proceedings.

The Tenants submitted a copy of the decision from those proceedings into documentary evidence.

The Tenants submitted that the first two-month notice, was issued within days of receiving the decision in the previous case and that the February 8 & 24, Notices are just a continuation of the Landlord's harassment and attempts to end their tenancy.

The Tenants were asked what they believed that Landlord's ulterior motives were in ending the tenancy, they Tenants testified that they were unsure but that their interactions with the Landlord changed suddenly last summer and that since then the Landlord has been harassing them and trying to get them to leave.

The Landlord testified that they are not harassing the Tenants but that they are exercising their rights as a landlord to inspect their property and ensure that it is being cared for properly.

The Landlord testified that the decision that their son would be moving into the rental unit was not made until September 2022, after the hearing for the one-month notice had already been scheduled with the Residential Tenancy Branch. The Landlord submitted that they wait until after that hearing was completed before they issued the two-month notice as they believe the tenancy would end under the one-month notice and there would be no need for the two-month notice. The Landlord agreed that they misunderstood the legislation regarding assigning or subletting a tenancy, which had been the reason they issued the one-month notice.

The Landlord testified that after receiving the decision from the previous hearing they had to issue the two-month notice as they still intended to move their son into the rental property.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by these parties that the Landlord served the Tenants with two Notices to end their tenancy, the first dated February 8, 2023, and the second dated February 24, 2023, (the "Notices") that both indicated that the

Landlord was ending the tenancy for their personal use of the property effective April 30, 2023.

The Tenants' application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

The Landlord has indicated that they intend to use the property to house their son. I have reviewed all of the documentary evidence before me, and I find there is sufficient evidence to prove to me, that the Landlord had issued the Notice in good faith and that the Landlord is going to use the rental property for the stated purpose on their Notices. Consequently, I dismiss the Tenant's application to cancel the Notices dated February 8, 2023, and February 24, 2023.

Pursuant to section 55 of the *Act*, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit.

I have reviewed the Notices, and I find that Notices are valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on June 30, 2023.

Additionally, both parties are informed of their rights and responsibilities pursuant to section 51 of the Act, regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51 (2) of the Act, which states the following:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the filing fee paid for this application.

As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the filing fee paid for this application. I grant permission to the Landlord to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

Conclusion

The Tenants' application to cancel the Notices, dated February 8, 2023, and February 24, 2023, is dismissed. I find the Notices are valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **not later than 1:00 p.m. on June 30, 2023**. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is granted permission to retain \$100.00 from the security deposit they are holding for this tenancy.

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: June 14, 2023

Residential Tenancy Branch