



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S, MNDL-S, FFL

Introduction

The landlord applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlord asks me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlord, pursuant to a Two-month Notice to End Tenancy for Landlord's Use, issued on or about 16 November 2022 [the 'Notice'].
2. Retention of a security deposit paid by the tenants to the landlord [the 'Deposit'] in compensation for unpaid rent.
3. Retention of the Deposit in compensation for damage the tenants caused to the rental unit.
4. Reimbursement for the \$100.00 filing fee for this application.

The landlord appeared on 16 November 2023 at the continuation of the *in-camera* hearing of this dispute, along with an advocate. The corporate tenants also appeared by way of an agent.

Preliminary Matter – Adjournment Application

On 7 November (nine days before this hearing) the tenants contacted the RTB to adjourn this hearing. The tenants were advised to make their application at the commencement of this hearing.

The landlord objected to this application, noting that this dispute has dragged on for two years now.

The tenants clarified for me that they are a company that conducts business internationally, with some 25 people involved in its operations, including four directors. They also argued that they could not proceed with the hearing of this dispute because their corporate budget would not permit them to pay for their advocate to assist them respond to this application until January next year.

I dismissed the tenants' application for an adjournment.

In doing so, I was aware of the criteria for granting an adjournment *per* rule 7.9 of the RTBs Rules of Procedure. The corporate tenants have had three months since my interim decision to prepare for the continuation of this hearing. I am not persuaded that their corporate budget is relevant to whether they have had a fair opportunity to prepare their response.

This dispute has gone on for two years, and I do not find it likely that a further delay would result in any resolution of the dispute. Indeed, I find that delaying a resolution of this dispute even further would prejudice the landlord, who has had to wait precisely two years since issuing the Notice for the future of this tenancy to be determined.

While there is prejudice to the tenants if I rule that the tenancy must end, I find that they have had at least three months to prepare to respond to what are very discrete issues: whether the landlord issued the Notice in good faith (which the tenants do not contest [see below]) and whether the Notice is effective.

In these circumstances, I proceeded with the hearing of this dispute.

Preliminary Matter – Relevance of the Deposit to the Notice

Rule 2.3 of the RTBs Rules of Procedure stipulates that, '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.'

In my interim decision on this dispute, I doubted the relation between the Notice and the Deposit, and noted my inclination to dismiss that portion of the application that deals with the Deposit, with leave to re-apply. But, I will permitted the parties an opportunity to make written submissions to me on the relationship between the Deposit and the Notice.

Neither party made any such submissions, and so I dismiss those aspects of this dispute that deal with the Deposit (as being unrelated to the Notice), with leave to re-apply.

Issues to be Decided

Having dismissed the issues over the Deposit, I am left with two issues to decide:

1. Is the Notice an effective notice to end tenancy?
2. Should the tenants reimburse the landlord for the cost of filing this application?

Background and Evidence

A couple of years ago, the landlord decided that he wanted his son [the 'Son'] to move into this rental unit.

During this hearing, the Son told me the following about why he wants to move into the unit:

- presently, he lives in a small basement with his two siblings, but it is not enough space for the three of them;
- all three children are studying at university together, with the Son being in his third year of a 'pre-med' program; and
- this program lasts four years in total, to be followed by a further four years of study, such that once he moves into the unit, the Son will live there for another three to four years, *i.e.* 'So long as I'm studying'.

The tenants told me that they were sure that whatever the Son had testified to was correct.

Because of this desire to have his Son move into the unit, the landlord issued the Notice. In drafting the Notice on or about 16 November 2021, the landlord:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 31 January 2022; and

5. stated the basis for the Notice as the occupancy of the unit by his child or spouse.

The landlord told me that he served this Notice on the tenants by leaving a copy of it in their mailbox on 16 November 2021. This statement was supported by the statement of a witness who saw the Notice being served, and by a photograph of the agent for the tenants appearing on a balcony of the unit when the Notice was served.

This agent for the tenants, however, swore to me that he had never received the Notice, because the mailbox is outside the unit. He also denied the authenticity of the landlord's photo, purporting to depict him on the balcony of the unit at the time the Notice was served.

Despite this, RTB records confirm that the tenants originally applied to dispute this Notice on 17 February last year.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

The tenants do not dispute that the landlord issued the Notice in good faith *per* section 49 (3) of the *Residential Tenancy Act* [the 'Act']: indeed, they accept what the Son told me about why the landlord wants to end the tenancy.

And so I am only left with determining the efficacy of the Notice itself (see section 49 (7) of the Act). And section 52 of the Act tells us that for a notice to end tenancy to be effective:

1. a landlord must sign it and date it;
2. it must give the address of the rental unit, and state the effective date of the notice;
3. it must also state the grounds for ending the tenancy; and
4. it must be in an RTB form.

Again, the tenants do not take issue with the efficacy of the Notice.

The only objection the tenants made to the Notice was its service: they denied ever receiving it. I accept, however, the landlord's statements regarding service, which are corroborated by a witness statement and by a photograph. I find that the landlord probably served the Notice on the tenants two years ago, on 16 November 2021. Even if this were not the case, the tenants applied last winter to dispute this Notice, which confirms that they had received the Notice at some point before then.

Having found the Notice to be an effective one, and accepting that the tenants do not dispute that the landlord issued this Notice in good faith, I grant the landlord's application by upholding the Notice and ordering that the tenancy shall end.

As to when it should end, the landlord argues that the corporate tenants have had the past two years to seek a new rental unit, and so ending this tenancy within a month is reasonable. For their part, the tenants argued that because they have occupied this unit for almost five years, ending the tenancy at the end of January would be more reasonable.

Having considered the positions of the parties, I order that the corporate tenants vacate the unit by 1 p.m. on 31 December 2023, giving them over one month to make arrangements.

As the landlord has succeeded in this application, I also order that the tenants reimburse him for the filing fee in the amount of \$100.00.

Conclusion

I make an Order of Possession in favour of the landlord. This order is effective at 1 p.m. on 31 December 2023. But the landlord must serve it upon the tenants.

If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To

learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 20 November 2023

Residential Tenancy Branch