



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant's advocate and the landlord. One of the tenants (GK) attended the hearing but only for few minutes, while we discussed why the tenant had failed to apply for dispute resolution to dispute the notice to end tenancy within the required time frame.

While there was a little confusion during the discussion on the service of documents, the parties confirmed that they had received each other's evidence within allowable timeframes.

The tenant's advocate did submit that she had uploaded an audio file to the Residential Tenancy Branch Dispute Management System (DMS) but I found no such file in the system. I confirmed also that evidence submissions receipts that were issued did not include any audio files. In addition, the advocate stated she had not served the audio file to the landlord. For these reasons, I have not considered any audio recordings, only the documentary evidence submitted by both parties.

At the outset of the hearing, the tenant's advocate noted that the tenant named "Jesse" in the application should actually be "Justin". In the absence of any objection from either party, I amend the application to correct the tenant's name.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to more time to submit an Application for Dispute Resolution seeking to cancel a notice to end tenancy, to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 66, 67, and 72 of the *Act*.

Should the tenants fail to succeed in cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The parties agreed began on June 14, 2011 as a month to month tenancy for a current monthly rent of \$1,080.00 due on the 1st of each month with a security deposit of \$500.00 and a pet damage deposit of \$250.00 paid.

The tenant submitted into evidence a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property issued by the (selling) landlord on December 20, 2021 with an effective vacancy date of March 1, 2022 citing:

“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.”

The tenant also submitted a copy of a Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession, dated December 18, 2021, which states that the selling landlord and the purchasing landlord entered into a contract for sale on December 3, 2021; all conditions have been satisfied; the property is currently rented; the buyer intends in good faith to occupy the rental unit and asking the selling landlord to issue a Two Month Notice to be effective by March 1, 2022.

The parties agreed the tenants received the Notice to End Tenancy on December 24, 2021. The tenant acknowledges that they failed to submit their Application for Dispute Resolution within the 15 days allowed or by January 8, 2022. I note that January 8, 2022 was a Saturday which would extend the deadline to submit to January 10, 2022. The tenant applied on January 12, 2022.

The tenant's advocate submitted that the tenants did not have access to a computer and do not use computers, so were unable to apply using the online application. The advocate also submitted that the tenants could not enter Service BC office when he

attended. The advocate submitted that she was actually contacted by a local news reporter to see if she could help the tenants.

The tenant (GK) testified that when he got the Notice he tried to go the Service BC office but that he could not get in...that he needed to make an appointment, but that the did not make an appointment. He submitted that he had attempted to call to get assistance, but he didn't understand how to proceed.

The tenants' advocate stated that the tenant JK was not able to assist with these issues as he was suffering from a mental health disorder that prevented him from doing so.

In regard to the Notice itself, the landlord testified that he had moved to the area in the summer of 2021 and that he started renting a rental unit to establish himself while he was looking for a place to buy so he could move in. He stated that on the documents provided to his realtor he used his mother's address in a different location as her address was more permanent in nature and he didn't want mail going to his rental address, while he proceeded with the purchase of the property.

The landlord indicated that his current living accommodation had been a fixed term tenancy that converted to a month-to-month tenancy on February 1, 2022. He stated he had planned to give his landlord his notice to end the tenancy to be effective on March 1, 2022, which is the same date that he took possession of the subject residential property with his intention to be to move into the main floor of this rental unit. He stated that before he gave his landlord his notice, he received the tenants' Application for Dispute Resolution and as such as not yet given his landlord notice of his intention to vacate his current living accommodation.

The tenants' advocate submitted that the tenants do not believe the landlord is going to use the rental unit to move into. They submit that during conversations with the landlord when viewing the rental unit prior to the purchase the landlord had discussions with the tenants about possibly increasing the rent.

The advocate also submitted that the landlord had previously issued a notice to end tenancy to the occupants of the basement rental unit as well, but they cancelled it after they knew that these tenants were disputing this Notice to End Tenancy.

The advocate asserts, as well, that at the time the Notice to End tenancy was issued not all "subject to's" had been removed. She also submitted that one of the subject to's required the landlord to go to the city to ensure they are satisfied of a number of issues related to the property and as such contradicts the landlord's assertion that he currently lives in the city.

In addition, the advocate submits that the final subject to was for the landlord to receive a copy of the current tenancy agreements. The tenant submits that this shows the landlord was wanting to continue to rent out the rental units.

Because of her other work, the advocate questions the landlord's written submission that states that his brother is a sales agent for company and plans to set up an office in the community. She also questions social media accounts where she says that the landlords identify themselves as dealing in real estate investments and that they also indicate that landlord lives in another community and not the community where he states he is currently living. I note the advocate has provided documentary evidence of the social media accounts or to refute the landlord's brother's work location.

The tenants' advocate submits that based on these inconsistencies, she believes the landlord intends to re-rent the rental unit and not live in it.

To each of the tenant's assertions the landlord provided responses or documentary evidence. For example, in relation to the issue of the removal of "subject to's" from the contract. The documentary evidence provided by the landlord shows that they were removed on December 17, 2021; that the request for the (selling) landlord to issue the Two Month Notice was dated December 18, 2021; and the Two Month Notice to End Tenancy was issued on December 20, 2021.

The landlord provided an explanation of why he used his mother's more permanent address in the purchase documents.

Analysis

Section 49 (2) states subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

Section 49(5) says a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser 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.

Section 49(8) allows a tenant to dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

Section 49 (9) says that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Section 66 stipulates that the director may extend a time limit established by the *Act* only in exceptional circumstances. However, the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline 36 stipulates that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Guideline goes on to say I should consider the following:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

While the tenant and their advocate provided explanations as to why the tenant was not able to file their Application for Dispute Resolution, I do not find that they have provided any evidence to support any exceptional circumstances that prevented the tenant from submitting an Application.

For example, there is no evidence that the tenant took any steps to comply with the time limit; such as an affidavit or witness testimony from the reporter the advocate indicated contacted her or when that was done. There is no evidence to confirm any attempts of the tenant to attend the Service BC office for assistance or why he had any difficulty connect with that office.

I accept that the tenant does not have access to a computer or that the ability to use one to submit their Application for Dispute Resolution online. However, that is specifically why the Residential Tenancy Branch relies on Service BC offices across the province to assist people with, among other things, navigating the application for dispute resolution process.

Based on the above, I dismiss the portion of the tenants' seeking more time to apply to cancel a notice to end tenancy, without leave to reapply.

In the event that I was wrong to not allow an extension of time, I also find the landlord has established, on a balance of probabilities, they intend to occupy the rental unit. In making this determination, I was aided by Residential Tenancy Policy Guideline 2a which states:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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.

To each of the tenant's assertions the landlord provided responses or documentary evidence. For example, in relation to the issue of the removal of "subject to's" from the contract. The documentary evidence provided by the landlord shows that they were removed on December 17, 2021; that the request for the (selling) landlord to issue the Two Month Notice was dated December 18, 2021; and the Two Month Notice to End Tenancy was issued on December 20, 2021.

The landlord provided an explanation of why he used his mother's more permanent address in the purchase documents.

For these reasons, I prefer the landlord's testimony that they intend to occupy the rental unit as noted in the Notice to End Tenancy.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the One Month Notice to End Tenancy for Landlord's Use of Property issued by the selling landlord on December 20, 2021 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the

tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 28, 2022

Residential Tenancy Branch