



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated February 28, 2022 ("Two Month Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, and two agents for the Landlord, J.B. and T.B. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlords said they had received the Application from the Tenant, but that he did not give them any evidence to support the Application. The Landlord submitted evidence to the RTB, but she confirmed that she had not served the Tenant with any documentary evidence. I advised that I would not, therefore, be able to consider the Landlord's video and documentary evidence in this proceeding, although I noted that the Landlord's testimony was evidence before me.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the

hearing and that anyone who was recording it was required to stop immediately.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a Two Month Notice. I told them I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing. The Parties confirmed that they understood this direction.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. Usually, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord for the Tenant's claim.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2021, with a monthly rent of \$750.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$375.00, and no pet damage deposit. The Landlord confirmed that she still holds the Tenant's security deposit for this tenancy.

In the hearing, the Parties confirmed that the Landlord served the Tenant with the Two Month Notice, which they said was signed and dated February 28, 2022. They agreed that it has the rental unit address, and that it was served in person on February 28,

2022, with an effective vacancy date of May 1, 2022. They agreed that the Two Month Notice was served on the grounds that 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). In this case, the Landlord said that the intention of the Two Month Notice is for her sons to move into the rooms in the basement of the residential property – the rental unit.

In the hearing, the Landlord explained the reason for issuing the Two Month Notice, as follows:

I have reasons for the Two Month Notice. We have two sons and one graduated in April and the second boy graduates in May. They want to live independently. We sent notice to two tenants and that is the first reason.

The second reason is we have four adults upstairs. We only have one bathroom. We are not convenient. We need to have one more bathroom, that's the reason.

The Tenant replied to the Landlord's testimony, as follows

I understand her concern I'm not against it; however, her reasoning has changed numerous times. She doesn't have - I wasn't recording the conversation when she was talking. When she first initially told us, [S.] and myself, she was doing some construction of a bathroom upstairs, taking out a tub upstairs. And she said city officials had to verify the safety of the construction. And that affected her ability to rent the downstairs

A second reason was that she wanted to rent this out as an AirBnB, and she wanted her family out and have her kids. The city won't allow her to rent that way.

She didn't write the other ones, and I didn't record this. At the same time, we both got served with papers, because of the removal of the bathroom upstairs and how it affects the downstairs. I've done plenty of construction, and I don't understand how that's relevant.

I asked the Tenant to focus on the eviction notice before us, the Two Month Notice. He said:

For a period of a month, there was a vacant room and not one of the sons made any effort to move down. There was a room clean, vacant with its own bathroom,

and she didn't have any one come in. A month later, she rented again to a student, and then to another student.

The Tenant said that there are three rooms rented out in the basement of the residential property. The Landlord further explained the rental situation in the residential property.

We have three rooms downstairs, one with private bathroom, two rooms sharing one bathroom. We need two rooms together for my sons and the rooms sharing one bathroom. The other room is small and includes a smaller bathroom, so I can rent out to support my mortgage. I need two rooms together from May, because when I submit documents in the end of February, they have two months notice, and the last month free, and [my sons] can have room in May.

[My sons] don't want to share with other people, so they share together. The room that [the Tenant] mentioned, that was available from mid-March. I do not have enough for my mortgage, so it is available from March, so I tried to rent it up for a few more months. I rent out the room and I only allow him to stay until August 31st. And he knows that that room was available in March, but he never asked me to rent the room; it is more expensive but smaller. I need two rooms for my sons.

In his last statements, the Tenant explained that he suffered health issues from taking a covid vaccine, which he says the Landlord forced him to take. However, I find that the Tenant did not indicate how this is relevant to his claim, other than he does not have anywhere else to go, although he said he has been looking for somewhere else to live with the assistance of a housing authority. I find that these considerations are not relevant to the authority I have under the Act to decide these matters.

Analysis

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

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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 tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that both Parties' testimony in the hearing indicates that the Landlord intends her sons to take over two rooms and a bathroom in the basement, including the rental unit, for their own use. Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 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. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51 (2), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit, **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 25, 2022

Residential Tenancy Branch