



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord, PS, and the Tenants, AG and SS, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on February 27, 2022. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on February 27, 2022 pursuant to Section 88(a) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and their evidence on April 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on April 18, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2017. The fixed term ended on June 30, 2019, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,912.00 payable on the first day of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was April 30, 2022. An April 8, 2022 email extended the effective date of the Two Month Notice to June 30, 2022.

The Tenants' testified that their daughter, due to conflict events at home between a downstairs tenant and her father, and a significant international disaster which was close to her home community, suffered serious trauma impacts after experiencing these events. The Tenants now say their daughter is doing much better mentally and will be leaving for university in another city this upcoming September 2022. The Tenants uploaded a letter from their daughter's doctor which specifies that,

... It is in my medical opinion that [daughter] will benefit from a stable living situation until August 2022 before any proposed moves are made. She will already be experiencing many changes during this important transition period in addition to the current pandemic and global instability and uncertainty. Therefore, it will be important to maintain the same housing to reduce additional stressors.

The Tenants asked the Landlord for an end of tenancy date to be August 31, 2022 to accommodate a safe transition for their daughter. The Tenants plan to tell their daughter about the Two Month Notice on June 28, 2022, when she has finished all her graduation festivities. They said they have a large house and need to decrease the amount of all their possessions. They have items for sale on Facebook marketplace and Craigslist. The Tenants main focus is their daughter's health.

The Landlord provided a medical letter stating that “[Landlord] was assessed today and would benefit from moving into her own house for health reasons.” The Landlord also uploaded documentary evidence that she has secured movers to move her present household to the residential property on July 7, 2022. The Landlord also arranged with Telus internet services to come into the rental property on June 8, 2022, and install her internet. The Telus internet install happened two days before this hearing, and the Tenants asked her for more time. The Landlord said she can only extend their tenancy end date to July 6, 2022. The Landlord stated that the Tenants can get storage for their furniture, but she needs to move into her home.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

49 ...

- (2) *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,*

...

- (3) *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.*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...*

- (8) *A tenant may 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*

...

The Landlord's Two Month Notice was served on February 27, 2022, and the effective date was noted as April 30, 2022. I find the Two Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenants requested a later end date due their daughter's health, and the Landlord subsequently agreed to an end date of June 30, 2022. In the hearing, the Tenants asked for an end date of August 31, 2022, but the Landlord would only agree to a tenancy end date of July 6, 2022.

The Landlord submits that she has her own health issues that necessitate her moving back into her home. The Landlord has contracted movers on July 7, 2022, to move her furniture and other belongings from her present residence to the residential property. The Landlord has also arranged new Telus internet services into the home for her use. I find that the Landlord intends to move into her home and cannot put the time off any longer. I find the Landlord has proven, on a balance of probabilities, that she has the requisite good faith requirement that she intends to occupy the residential property. I dismiss the Tenants' application to cancel the Landlord's Two Month Notice without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) *the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the Landlord's Two Month Notice complies with Section 52 of the Act, and I uphold the Landlord's notice. The Landlord is granted an Order of Possession which will be effective on July 6, 2022 at 1 p.m.

As this tenancy has ended based on the Two Month Notice served, I caution the Landlord to regard Section 51 of the Act regarding: **Tenant's compensation** after a Section 49 notice, which comes into play when the Landlord does not fulfil the stated purpose in their notice.

Conclusion

The Landlord is granted an Order of Possession, which will be effective on July 6, 2022 at 1 p.m. The Landlord must serve this Order on the Tenants as soon as possible. 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 Act.

Dated: June 10, 2022

Residential Tenancy Branch