



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Blueberry Holdings Ltd.

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on December 13, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 21, 2023.

Both parties attended the conference call hearing. At the outset, the Landlord confirmed their receipt of the Tenant’s Notice of Dispute Resolution Proceeding. The Tenant confirmed they received the evidence prepared by the Landlord. On the basis of both parties’ confirmation of disclosure from the other, I proceeded with the hearing.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Background and Evidence

The Tenant and the Landlord each provided a copy of the tenancy agreement. This shows the Tenant signed the agreement with the prior Landlord in late 2020. The tenancy started on November 1, 2020 and the Tenant paid \$1,000 per month. The rent increased to \$1,015 per month on November 1, 2022.

The Landlord issued this Two-Month Notice on November 30, 2022; both parties provided this in their evidence. The Tenant in the hearing confirmed that as of the date of the hearing they continued to reside in the rental unit.

The end-of-tenancy date, as provided on the Two-Month Notice, was February 2 2023.

Page 2 of the document shows the Landlord's indication:

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 Landlord also provided a letter titled "Re: Vacant Possession" dated November 30, 2022, in which the Purchaser asked the Landlord for vacant possession, with the "moving in of personal items 21 days before our closing date of March 1st." This was indicated to be the "purchaser's written request for the seller to issue an eviction notice" attached to the Two-Month Notice served to the Tenant.

The Landlord provided a copy of the contract of purchase and sale dated November 30, 2022. This shows the sale will be completed "on or before March 1, 2023." The Purchaser was to have vacant possession of the rental unit property at 12:00pm on March 12, 2023.

On February 28, 2023 the Landlord and Purchaser jointly signed an amendment to the contract of purchase and sale. This referenced this Residential Tenancy Branch scheduled hearing, and lowering the purchase price by \$10,000, plus \$100 per day starting March 1, 2023. Additionally, if the Landlord cannot deliver vacant possession by June 1, 2023, they will have to pay the Purchaser liquidated damages of \$12,500, and the contract of purchase and sale will be ended. The amendment notes specifically: "The completion date will be changed from March 1, 2023, to May 1, 2023, and [the Purchaser] has the option to extend it to June 1, 2023."

On March 20, 2023 the Landlord emailed to the Tenant to ask of their intentions on moving out from the rental unit, since the Tenant's Application to the Residential Tenancy Branch specified they needed more time to find a new living arrangement. The Landlord followed up with a letter stating the same, and served this to the Tenant by attaching it to the door at the rental unit.

Following this, the Tenant queried to the Landlord about the possibility of renting a different unit.

In a cover letter dated March 24 prepared for this hearing, the Landlord noted “I need the unit vacant by May 6th at the latest.” And: “The purchaser needs an access 21 days prior to the completion of the sale.”

As set forth in the contract of purchase and sale amendment, the Purchaser “was supposed to have access to the unit 21 days before completion.” This is a re-statement of clause 3.b. of the original contract of purchase and sale.

In the hearing, the Landlord explained that a date of June 1st for the Tenant to be vacated from the rental unit “is not really fair”. The Landlord insisted on a date of May 1st. They reiterated that they served the Two-Month Notice in November 2022, some five months prior. They also set out that they waived rent to the Tenant during this time to be supportive.

The Tenant set out that they found a new living arrangement, with the move-in date set for July 1st. This is in a different municipality. The Tenant set out the hardship they faced over the last year with an illness that left them in a restricted condition. They stated they have no short-term options with respect to ending the tenancy earlier than this.

Analysis

The *Act* s. 49(5) provides that a landlord may end a tenancy by giving a Two-Month Notice if the landlord enters into an agreement to sell the rental unit, and the purchaser asks the landlord in writing to give notice to end the tenancy on the basis that either the purchaser, or a close family member, intends to occupy the rental unit.

The *Act* s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss a tenant’s application or uphold a landlord’s notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise. I find, in summary, that the Tenant applied for dispute resolution in order to delay the process of the tenancy ending before they could secure adequate living arrangements elsewhere.

Unfortunately, this is at the stage where there will be significant expense to the Landlord, and the risk of the sale failing, if the Tenant remains in the rental unit any longer. I am satisfied of

the urgency of the situation for the Landlord and find it prejudicial to them should the tenancy continue past its negotiated end-of-tenancy date.

I am mindful that the hardship faced by the Tenant in having to end this tenancy is replicated in the case of the purchaser, who is emigrating from overseas to move into the rental unit.

I uphold the Two-Month Notice issued on November 30, 2022 and find it was issued in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the Landlord is entitled to an order of possession on the effective date.

I have set the end-of-tenancy date for May 15, 2023 by 1pm. This is to account for the late-scheduled hearing in this matter for which neither the Landlord nor the Tenant is to blame, being a factor that is completely out of their control. I grant an Order of Possession to the Landlord for that exact date and time.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

I grant an Order of Possession to the Landlord effective **May 15, 2023 at 1:00pm**. The Landlord must serve this Order of Possession on the Tenant if necessary. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Dated: April 23, 2023

Residential Tenancy Branch