



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: CNL FFT

Introduction

This dispute relates to a tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 4, 2021 (2 Month Notice),
2. Filing fee of \$100.

The parties attended the teleconference hearing. The parties were affirmed and given the opportunity to provide documentary evidence prior to this hearing, to present testimony evidence and to make submissions.

After service was addressed, the hearing continued. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be provided by email.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, should the filing fee be granted?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A 60-month (5 year) fixed-term tenancy began on August 1, 2018, and is scheduled to convert to a month-to-month tenancy after July 31, 2023. Monthly rent in the amount of \$5,500 is due on the first day of each month.

The tenant confirmed that they were served on December 14, 2022, with the 2 Month Notice dated December 13, 2022. The effective vacancy date on the 2 Month Notice is listed July 31, 2023, which was over 7 months from the effective vacancy date. The landlord stated that they gave additional months to prepare the tenant as there is livestock on the rental property.

The tenant disputed the 2 Month Notice on December 25, 2022, which was within the allowable time limitation under the Act of 15 days. Page 2 of the 2 Month Notice indicates the reason as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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).

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord 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.

☐ 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 no longer qualifies for the subsidized rental unit.

The landlord testified that they plan to sell their current home in Surrey to live in their home in Langley, the subject property (Langley property). The landlord confirmed that they intend to grow blueberries and garlic at the Langley property as they do not grow either at their current property in Surrey and do not want to commute between Surrey and the Langley property to grow blueberries and garlic. The landlord also confirmed that his wife, DG will be living with him at the Langley property.

The tenant stated that they do not have any reason not to believe the landlord but wanted six months notice as per the tenancy agreement. The parties were advised that the Act does not require six months notice, which will be addressed further below.

Analysis

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

2 Month Notice to End Tenancy for Landlord's Use of Property – I find the tenant disputed the 2 Month Notice within the 15-day timeline provided under section 49(8)(a) of the Act and as noted above.

The tenant did not raise the issue of good faith and indicated that they had no reason not to believe the testimony of the landlord. As a result, I accept the testimony of the landlord at face value and accept that the landlord intends to occupy the rental unit and that they intend to grow blueberries and garlic on the Langley property.

In addition, section 5(2) of the Act applies and states:

5(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I have listed the above section as I find the tenancy agreement requirement to provide 6 months' notice is not enforceable when the Act in this instance, only requires 2 months. I acknowledge the landlord provided more notice than required due to livestock being on the Langley property. I will delay the order of possession from 1:00 pm on July 31, 2023 to 6:00 p.m. on July 31, 2023 based on there being livestock to allow additional time to ensure that livestock have been removed as required.

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid. Therefore, I dismiss the tenants' application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice.

Section 55 of the Act states:

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.**

[emphasis added]

Given the above and considering that I find the 2 Month Notice complies with section 52 of the Act as it was signed and dated and included all the required information under the Act, I find that the landlord is entitled to an order of possession effective **July 31, 2023 at 6:00 p.m.**

I find the tenancy ends on that date and time.

As the tenant's application was not successful, I decline to grant the filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed. I uphold the 2 Month Notice issued by the landlord.

The landlord has been granted an order of possession effective July 31, 2023 at 6:00 p.m. The tenancy ends on that date and time. The order of possession must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenant will not be required to pay July 2023 rent as compensation for the 2 Month Notice being served and upheld. This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenants.

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: April 27, 2023

Residential Tenancy Branch