



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPL, O

Tenant: CNL, MNDC, LRE, LAT, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenant sought to cancel a notice to end tenancy; an order suspending or setting restrictions on the landlord's right to access; an order to allow the tenant to change the locks of the rental unit; a rent reduction; and a monetary order. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the start of the hearing the tenant requested that her monetary claim; her request for an order to suspend or set restrictions on the landlord's right to access; her request for an order to allow the tenant to change the locks of the rental unit; and her request for a rent reduction be withdrawn from consideration from this Application. I accept the tenant's request to withdraw these items and not that she remains at liberty to file a new and separate Application for Dispute Resolution to deal with these matters at a future time in accordance with any relevant sections of the *Residential Tenancy Act (Act)*.

I clarified for both parties that as result of this withdrawal the only matter adjudicated in this hearing would be the landlord's Application seeking an order of possession and the tenant's Application seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property.

During the hearing, the tenant requested an affirmation of both parties to provide true and honest testimony. I requested each of the participants to affirm the testimony they were about to provide and, because both parties had already provided some testimony prior to the affirmation, the testimony they had already provided.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of the property, pursuant to Sections 49 and 55 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 2 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, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 25, 2014 for the tenancy that began on December 1, 2014 as a month to month tenancy for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property signed by the parties on May 13, 2015 with an effective vacancy date of July 31, 2015 citing the rental unit will be occupied by the landlord or the landlord's spouse; or a close family member (father, mother, or child) of the landlord or the landlord's spouse; and
- A copy of the tenant's handwritten 10 day notice to end the tenancy dated June 24, 2015.

The tenant confirmed in her both her Application for Dispute Resolution and her testimony that she received the notice from the landlord on May 13, 2015. The tenant also testified that she filed her Application for Dispute Resolution on May 29, 2015.

I had requested verbal confirmation from the tenant because the tenant's Application was marked as faxed from the Service BC office on May 29, 2015 at 11:49 a.m. and date stamped by the Residential Tenancy Branch as being received on May 29, 2015. I also note that there is an audit note on file dated June 1, 2015 stating the Application had been received by the Service BC office on May 29, 2015.

When originally asked when she submitted her Application for Dispute Resolution the tenant testified that she did not have her glasses and that she could not tell from the documentation in front of her. She stated that she could not remember the specific date but that the Service BC office she attended was having difficulty faxing items to the Residential Tenancy Branch.

She asked if May 29, 2015 was a Friday and after referring to a calendar I confirmed to the tenant that yes May 29, 2015 had been Friday. At that point the tenant confirmed that she had filed her Application on Friday May 29, 2015.

The tenant explained that she had not waited to submit her Application for Dispute Resolution but that she had a number of other items she needed to deal with at the same time and she had not been able to submit her Application until the time that she did.

After I explained that by filing her Application on the 16th day after receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property and the Act required that she file her Application within 15 days of receiving it or she would be conclusively presumed to

have accepted the end of the tenancy, the tenant changed her testimony and stated that she had submitted her Application for Dispute Resolution on Thursday, May 28, 2015.

I advised both parties, in the hearing, that I would consider the tenant's testimony in regard to the filing of her Application for Dispute Resolution and I would reserve my determination on this issue to this written decision.

The parties confirmed that the tenant had provided the landlord a 10 day notice of her intention to vacate the rental unit as is allowed under Section 50 of the *Act* when a tenant receives a 2 Month Notice to End Tenancy for Landlord's Use of Property under Section 49.

In her written notice, dated June 24, 2015 the tenant provided her reasons for issuing her 10 Day notice. She states due to the landlord's refusal to comply with the tenant's attempts to resolve matters of wrongfully entry to the rental unit and the landlord's husband's harassment of the tenant she will vacate the rental unit.

The tenant stated that she provided her notice to the landlord under duress. The tenant raised a number of issues relating to her complaints that the landlord had, since the start of the tenancy, not fulfilled her obligations under the *Act*. She testified that she blames the landlord for two lost opportunities for work and travel abroad since the landlord's 2 Month Notice was issued and because she had been intimidated by the male landlord she felt she had no choice but to vacate the rental unit.

She stated, however, that she was not able to find alternate accommodation so she could not move out. The tenant confirmed that once she determined that she could not find new accommodation and could not, therefore, move out of the rental unit she did not communicate to the landlord that she was not moving out.

The landlords testified that they had issued the 2 Month Notice because their daughter had just sold her home and was about to begin construction on another home but needed to live in the rental unit until such time as her new home was available for occupancy.

The tenant submits that she questions the landlord's reasons to end the tenancy. She stated that she and the landlord had been discussing ways to ensure the tenant would continue the tenancy long term.

She also testified that since the beginning of the tenancy the landlord had failed to acknowledge her responsibility to comply with her obligations as outlined in the *Act* and the tenancy agreement. As examples, the tenant submitted that the landlord had failed to provide receipts for security deposit and rental payments; failure to provide "wifi" services; being lied to about sound insulation between her unit and the landlord.

The tenant submits that when she advised the landlord in writing about these issues she had "wifi" services within 5 minutes; then she was told she would no longer have "wifi"

services. She states also that the male landlord had locked her out of the rental unit on an occasion and she viewed this lockout as retaliatory.

The landlords submit that the tenant has a different vision of events of what happened in regard to these claims.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the Strata Property Act;
 - iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

Section 49(5) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(6) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

While I accept that the tenant may not have been able to read the documents in front of her during the hearing as a result of not having glasses, I find that the relevant documentation provides clear and substantial evidence that the tenant filed her Application for Dispute Resolution on Friday, May 29, 2015.

Despite the tenant's testimony that Service BC had difficulty in faxing her Application and in the absence of any such notations on the audit notes for either the tenant's file or the landlord's file, I find the tenant has provided no evidence to support her assertion

that she filed her Application on a date that was different than the date on all of the documentary submissions confirming May 29, 2015.

As a result, I find the tenant has failed to submit an Application for Dispute Resolution to dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property within the required 15 days allowed under Section 49(5) of the *Act*.

Subsequently, I find the tenant is conclusively presumed to have accepted the tenancy and must vacate the rental unit pursuant to Section 49(6). I therefore dismiss the tenant's Application for Dispute Resolution in its entirety.

As I have found the tenancy has ended; I have dismissed the tenant's Application for Dispute Resolution; and the landlord did not apply for an order of possession based on the tenant's 10 Day notice I make no rulings or findings of fact related to the tenant's 10 Day notice issued on June 24, 2015.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **July 31, 2015 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: July 17, 2015

Residential Tenancy Branch