



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPL

CNQ ERP FFT OLC RP

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the Residential Tenancy Act ("Act").

The landlord applied for:

- An Order of Possession for Landlord's Use pursuant to sections 49 and 55; and
- Authorization to recover the filing fee for the application from the tenant pursuant to section 72.

The tenant applied for:

- An order to cancel a 2 Month Notice for not qualifying for subsidized rental unit pursuant to section 49.1;
- An order the landlord make emergency repairs to the rental unit pursuant to section 62;
- Authorization to recover the filing fee for the application from the landlord pursuant to section 72;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- An order to reduce rent for services agreed upon but not provided pursuant to section 65.

Both parties attended the hearing. Each party acknowledges receiving one another's application for dispute resolution and evidence, with the exception of one of the landlord's photographs which he acknowledges was not served. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

All testimony and documentary evidence has been taken into consideration and only that which was relevant to the issues is explicitly referenced in this decision.

Preliminary Issue

The landlord provided a photograph taken at the time he served the 2 Month Notice to End Tenancy for Landlord's Use which was not provided to the tenant. In accordance with Rule 3 of the Rules of Procedure, the photograph was excluded from being used as evidence.

Preliminary Issue

The tenant's application seeks an order to cancel a 2 Month Notice for not qualifying for subsidized rental unit pursuant to section 49.1. The Notice he was served is a 2 Month Notice to End Tenancy for Landlord's Use and I amend the application to reflect the actual nature of the tenant's application pursuant to section 64(3)(c) of the *Act*.

Preliminary Issue

Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy ("Notice") and the landlord's application to end the tenancy for landlord's use were related and could be heard together. The tenant's other issues are not sufficiently related, and I exercise my discretion to dismiss them with leave to reapply.

Issue(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was filed. This tenancy began in June of 2013 as a fixed 19 month tenancy, becoming a month to month tenancy at the conclusion of the 19 month term. Rent was originally \$2,35.00 monthly and is currently set at \$2,600.00 per month.

On February 4, 2019 the landlord signed the Notice, advising the tenant to move out of the rental unit by April 30, 2019. The reason for the Notice is 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). The landlord testified he is currently living in the basement of his brother's house. The rental unit is owned by his parents and when this tenant moves out, he will occupy the unit himself.

The tenant testified he received the Notice sent to him by registered mail on February 15, 2019. He went to the office of the Residential Tenancy Branch to file for dispute resolution on March 8, 2019.

The tenant testified the reason the landlord wants to end the tenancy is because he pays low rent and the landlord wants to have a tenant with higher rent. As evidence,

the tenant provided a copy of a decision made by an arbitrator who had dismissed a previous 2 Month Notice.

The parties agree the tenant has paid rent up to the effective date on the Notice, or April 30, 2019, however neither party testified whether the landlord compensated the tenant with the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act*.

Analysis

The tenant filed for dispute resolution to cancel the Notice 21 days after he received it, on March 8, 2019.

Section 49(8) and 49(9) provides timelines to be followed when a tenant is served with a Notice to End Tenancy for Landlord's Use of Property.

- (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
 - b. a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
 - c. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - d. must vacate the rental unit by that date.

As the tenant has not filed an application to cancel the Notice within 15 days of receiving it, 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 by that date.

Section 49(4) of the *Act* states a notice under this section must comply with section 52.

I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The effective date on the landlord's notice is April 30, 2019 and the tenant has paid rent up to and including that date. I find the landlord is entitled to an order of possession effective at 1:00 p.m. on April 30, 2019.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

I find the landlord is entitled to an order of possession effective **at 1:00 p.m. on April 30, 2019**. 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00**.

The tenant is entitled to receive from the landlord compensation equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act*. If the landlord fails to provide this compensation, the tenant may file for dispute resolution to obtain the compensation.

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: April 12, 2019

Residential Tenancy Branch