



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes CNL-4M-MT OLC FFT
OPL-4M FFL

Introduction

The tenant sought the following relief: (1) an order cancelling a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Notice"); (2) a request for additional time in which to dispute the Notice; (3) an order requiring the landlords' compliance; and, (4) an order for compensation to pay for the cost of the application filing fee. These claims for relief were made pursuant to sections 49(8), 66, 62, and section 72, respectively, of the *Residential Tenancy Act* (the "Act").

By cross-application the landlords sought an order of possession based on the Notice and an order for compensation to pay for their application filing fee. These claims for relief are made pursuant to sections 49(9), 55(1) or 55(2), and section 72, of the Act.

On February 24, 2023, a dispute resolution hearing took place at 11:00 AM, which was attended by one of the landlords. The tenant did not attend the hearing, which ended at 11:10 AM.

Preliminary Issue: Name of Applicant Tenant

During the hearing, the landlord provided sworn testimony that there is only one tenant listed on the written tenancy agreement, a copy of which was in evidence. Thus, the name of the second applicant, as it appears on the tenant's application, was removed and this is reflected on the style of cause on the cover page of this decision. The second named applicant on the tenant's application is not a party to this legal dispute.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to recover the cost of the application filing fee?

Background and Evidence

The landlord testified that he served all four pages of the Notice in person upon the tenant on September 13, 2022. A copy of the Notice was in evidence. The Notice indicates that the tenancy was being ended because the landlords intend to demolish the rental unit.

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.

A landlord may end a tenancy when they intend to demolish a rental unit by issuing a notice to end the tenancy under sections 49(2)(b) and 49(6)(a) of the Act. A Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (#RTB-29) is the form of the notice to end the tenancy, and this correctly used in this case.

A tenant has 30 days after they receive such a notice to make an application to dispute the notice. In this case, the tenant received the Notice on September 13, 2022 but did not make an application for dispute resolution until October 14, 2022, which is beyond the 30 day time limitation.

Pursuant to section 49(9) of the Act the tenant is conclusively presumed to have accepted the Notice and was required to vacate rental unit by the effective date of January 15, 2023. I also find that the Notice complied with section 52 of the Act.

The landlords are entitled to an order of possession of the rental unit pursuant to section 55(2)(b) of the Act. A copy of the order of possession is issued with this decision to the landlords. And the landlords must, if necessary, serve a copy of the order of possession upon the tenant.

Last, the landlords were successful in their application and are entitled to recover the cost of the \$100.00 application filing fee. Pursuant to section 38(4)(b) of the Act the landlords are authorized and ordered to retain \$100.00 of the security deposit in full satisfaction of this award.

The tenant did not attend the hearing. As such, their application is dismissed in its entirety without leave to reapply.

Regarding any compensation that might be owed by the landlords to the tenant, the landlords should refer to subsection 51(2) of the Act at

www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02078_01#section51.

Conclusion

IT IS HEREBY ORDERED THAT:

- 1. The tenant's application is dismissed, without leave to reapply.**
- 2. The landlords' application is granted. The tenancy is ordered ended effective immediately and I grant an order of possession.**
- 3. The landlords may retain \$100.00 of the security deposit pursuant to sections 38(4)(b) and 72 of the Act.**

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: February 24, 2023

Residential Tenancy Branch