



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPL FF
Tenant: CNL LRE OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 29, 2023.

The Landlord and the Tenant were both present at the hearing. Both sides provided affirmed testimony.

Landlord's application

The Landlord stated he served his Notice of Dispute Resolution Proceeding and evidence to the Tenant in person on June 25, 2023. The Landlord brought a witness to the hearing to corroborate service. Although the Tenant denies being served with this package, I find it more likely than not that it was in fact served, since the Landlord brought a witness who provided affirmed testimony to corroborate service. I find the Tenant was sufficiently served with this package on June 25, 2023.

Tenant's Application

The Tenant stated did not send his Notice of Dispute Resolution Proceeding package to the Landlord. I note the following Rule of Procedure:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) any fact sheets provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

The Tenant confirmed his email address, and during the hearing, I confirmed he was sent an email from the RTB with clear instructions and the Notice of Dispute Resolution Proceeding documents that he was required to serve to the respondent. As an applicant, he is responsible for serving the respondent with his Notice of Dispute Resolution Proceeding since it contains specifics about his application. Further, the Tenant applied for several grounds that were not sufficiently similar to the Landlord's cross application for an order of possession based off the 2 Month Notice. I find it would be prejudicial to proceed with the Tenant's application, with all the grounds sought, without him having served this Notice of Dispute Resolution Proceeding to the Landlord. It would not be fair for the Landlord to be blindsided with issues at the hearing. I hereby dismiss the Tenant's application, in full, with leave but this is not an extension of any statutory deadline.

With respect to the Tenant's evidence package, he stated he sent it by registered mail on September 8, 2023. Proof of mailing was provided. The Tenant sent it to the Landlord's address. The Landlord denied receiving the package. However, pursuant to section 90 of the Act, I find the Landlord is deemed served with this package 5 days after it was sent by mail.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence and arguments relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based off the 2 Month Notice to End Tenancy for Landlord's Use (the Notice)?

Background, Evidence and Analysis

In this review, I will only address the facts and evidence which underpin my findings below and will only summarize and speak to points and arguments which are essential in order to determine whether or not the tenancy will end by way of this Notice.

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Tenant stated that he received the Notice on May 31, 2023.

First, I turn to the Notice itself. The 2 Month Notice indicates that the Landlord selected two different grounds as a basis for ending the tenancy:

1) *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 or Landlord's Spouse*

And,

1) *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 Child of the Landlord or Landlord's Spouse*

I note the 2 Month Notice issued by the Landlord has a bold heading at the top of the second page which states the following:

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

Rather than selecting one "box" that applies, the Landlord selected multiple boxes. The form does not state that the Landlord should select all boxes that they believe apply, rather, it clearly indicates to pick one box and to select a "reason", not "reasons". I find it important to note that when the Landlord selects a ground, and issues the 2 Month Notice under that ground (and sub-ground), it creates obligations for the Landlord that

must be followed through with, and it is also important because it allows the Tenants to understand why the notice was issued, so that they can properly and fairly respond to it.

I note that if a tenancy ends by way of a 2 month notice such as this, then the Landlord is required to follow through with the ground selected on the notice, or potentially face a penalty of 12 months compensation for failing to follow through with the ground on the notice. If multiple grounds were selected, this could muddy the waters in terms of whether potential compensation due, since it would be unclear whether the Landlord would have to accomplish one of the reasons for ending the tenancy, or both, in order to avoid penalties.

Further, I note section 51(2)(a) of the Act also speaks to the “stated purpose” that must be accomplished by the Landlord in order to avoid paying compensation in the amount of 12 months rent. I note this part of the Act refers to the stated “purpose” for ending the tenancy, not “purposes”. Overall, I interpret all of this to mean that only one ground can be selected.

I find the Landlord failed to comply with section 52 of the Act, by selecting more than one ground on the 2 Month Notice, and I decline to amend the notice as I do not find it is reasonable to amend in this case given the inherent complexities in this part of the Act, including responsibilities that flow from this document.

The Landlord’s application is dismissed, in full, without leave.

Conclusion

The Notice issued on May 31, 2023 has been cancelled and the tenancy continues at this time.

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: October 4, 2023