



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPL, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use dated January 1, 2014 and purporting to be effective March 1, 2013. The landlord is also claiming monetary compensation for loss and damages caused by the tenant overholding the unit beyond the effective date of the Notice.

Both the landlord and a representative of the tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use?
- Is the landlord entitled to monetary compensation for damages and loss?

Preliminary Matters

Landlord's Monetary Claims

In the course of this proceeding and upon review of the landlord's application, I have determined that I will not deal with all the dispute issues that the landlord has placed on their application.

I find that some of the issues to be heard with respect to this application are not sufficiently related to the main dispute issue to be dealt with together at one hearing.

Rule 2.3 of *Dispute Resolution Proceedings Rules of Procedure* provide that, if, in the course of the hearing, the Dispute Resolution Officer determines that it is appropriate to do so, he or she may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In the case before me I find that the most pressing issue before me is the determination of whether or not this tenancy should be terminated. Therefore, I only will deal with the landlord's request seeking an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use. Accordingly, I dismiss the balance of the landlord's application, including the monetary claims, with leave to re-apply.

Tenant's Request to Adjourn the Hearing

The tenant's representative stated that the tenant has recently filed their own application for Dispute Resolution disputing the landlord's Two Month Notice to End Tenancy for Landlord's Use. The tenant hopes to have the landlord's application adjourned to be heard with the tenant's upcoming hearing.

No evidence was submitted in support of this testimony. However, the tenant's representative confirmed that the tenant will be seeking to extend the 15-day deadline for making an application to dispute a Two Month Notice to End Tenancy for Landlord's Use under the Act.

Rule 6.1 of the Residential Tenancy Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if "*written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.*"

In this instance, I find no indication that the Respondent had not sought, nor received, the required consent from the Applicant to support their request for an adjournment. I find that the tenant also failed to comply with other Rules of Procedure in making their request for an adjournment.

In any case, the Residential Tenancy Rules of Procedure require that the Dispute Resolution Officer consider the following:

- 1) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out.
- 2) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

3) weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

4) assess the possible prejudice to each party.

I find that adjourning these proceedings to be heard jointly with the tenant's pending application seeking to extend the deadline to dispute the Notice would serve no purpose.

Although section 66(1) of the Act allows an arbitrator to extend some time limits imposed by the Act, in specific and exceptional circumstances, I find that the tenant's application to extend the deadline will not succeed because section 66(3) specifically prohibits an arbitrator from extending the statutory 15-day deadline for the tenant to dispute any notice to end a tenancy ***beyond the effective date of that notice.***

In this instance I find that the effective date on the Notice for ending the tenancy pursuant to the 2-Month Notice is April 1, 2014.

Given that, the tenant's pending application seeks to extend the deadline for disputing the landlord's 2-Month Notice beyond the effective date of that Notice, which is not permitted under the Act, I find it unlikely that the tenant's upcoming hearing is relevant to the Two Month Notice to End Tenancy and the landlord's application that is now before me.

I also find that that need for an adjournment arises directly from the tenant's neglect as the tenant failed to make an application to dispute the Notice within the 15-Day statutory deadline. Moreover, I find that delaying the landlord's hearing for an Order of Possession by adjourning the matter to join the files would be unfairly prejudicial to the landlord.

Accordingly, I hereby dismiss the tenant's request to adjourn this matter.

Background and Evidence

The landlord had submitted into evidence a copy of the Two-Month Notice to End Tenancy, indicating that the landlord was ending the tenancy so that the landlord or a close family member could move in. The landlord is seeking an Order of Possession based on the Notice so that this can happen.

The tenant acknowledged that they did not file to dispute the Two Month Notice to End Tenancy for Landlord's Use.

Analysis

Under section 49(3) of the Act under, "*Landlord's notice: landlord's use of property*", the Residential Tenancy Act states that landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8) of the Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. The tenant confirmed that she did not file an application to dispute the Notice.

Section 49(9) of the Act provides that, 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use in the proper form that was fully compliant with the Act. I find that the tenant then failed to dispute the Notice within the required 15 days.

For the reasons above, I find that the landlord is entitled to an Order of Possession.

I also find that the landlord is entitled to be compensated for the \$50.00 cost of the application.

I hereby issue an Order of Possession in favour of the landlord effective 2 days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the landlord a monetary order in the amount of \$50.00 for the cost of the application. This order must be served on the tenant and may be enforced through an order from BC Small Claims Court if necessary.

The portion of the landlord's application seeking monetary compensation for damages and losses is dismissed with leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession..The monetary portion of the application is dismissed with leave to reapply.

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: May 22, 2014

Residential Tenancy Branch

