



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF; CNL, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for landlord's use of property, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 30, 2015 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 37 minutes in order to allow both parties to fully present their submissions.

The landlord testified that the tenant was served with the 2 Month Notice on November 30, 2015, by leaving a copy in his mailbox on the same date. The tenant confirmed receipt of the 2 Month Notice on December 3 or 4, 2015, after returning from vacation, but he could not recall the exact date. The tenant stated that the package had a tracking number on it which confirms that it was sent by registered mail on November 30, 2015, and it is deemed received after five days, as per section 90 of the *Act*. The landlord stated that she works for the post office and that she put a tracking number on the package to confirm that it was left in the tenant's mailbox on November 30, 2015, but that she did not mail it, she simply placed it in the tenant's mailbox herself. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 2 Month Notice.

I advised both parties during the hearing that I could not consider the landlord's contract of purchase and sale addendum or the tenant's Canada Post printout, at this hearing or in my decision. Both parties confirmed that both documents were not served upon the other party, as

required by Rule 3.1 Residential Tenancy Branch (“RTB”) *Rules of Procedure*, they were only served to the RTB.

Issues to be Decided

Should the landlord’s 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on November 1, 2010. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. Both parties agreed that this is a verbal tenancy agreement, as no written tenancy agreement was signed.

The landlord’s 2 Month Notice, which states an effective move-out date of January 31, 2016, identified the following reason for seeking an end to this tenancy:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties’ claims and my findings are set out below.

According to subsection 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on December 3 or 4, 2015, and filed his Application on December 17, 2015. Therefore, regardless of the date of receipt whether on December 3 or 4, the tenant is within the time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

Subsection 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if the landlord sold the property in good faith, all the conditions of the sale have been satisfied and the purchaser asked the landlord in writing to give notice to end the tenancy so that the purchaser can occupy the rental unit in good faith.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.

I accept the landlord's testimony that she sold the rental unit in good faith on November 17, 2015, that all of the conditions for sale were met, and that she received written notice from the purchaser on November 27, 2015 to occupy the rental unit in good faith and for the tenant to vacate by February 4, 2016. The landlord read out the terms of the contract of purchase and sale addendum during this hearing, confirming the above information, and I accept her affirmed testimony.

I find that the tenant failed to show that the landlord did not issue the notice in good faith. The tenant stated that the main reason he questioned the notice was because the effective date was incorrect, which he said made the notice invalid. I advised the tenant that an incorrect effective date is automatically corrected as per section 53 of the *Act*, which does not make the notice invalid. Further, an incorrect effective date is not a question of good faith.

The tenant stated that the purchasers of the rental unit came to view the unit on November 27, 2015, thereby questioning whether they had even purchased the property on November 17, 2015, as claimed by the landlord. However, I accept the landlord's testimony that the purchasers had already bought the rental unit but they were completing another walk-through of the unit in order to determine what renovations and repairs needed to be done before moving into the unit. I do not accept that this is a question of good faith.

Based on a balance of probabilities and for the above reasons, I find that the landlord sold the property in good faith, all the conditions of the sale have been satisfied and the purchaser asked the landlord in writing to give notice to end the tenancy so that the purchaser could occupy the rental unit in good faith. I find that the landlord has met her onus of proof under section 49(5) of the *Act*.

I find that the landlord did not waive her right to enforce the 2 Month Notice, whether expressly or impliedly. I find that although the landlord had a post-dated rent cheque for February 2016 from the tenant, she did not cash it, in order to await the outcome of this hearing. Further, the

tenant testified that he was aware that the landlord was still pursuing his eviction at this hearing, and both parties attended the hearing and presented submissions in order to determine the end of tenancy issue. Therefore, I find that the tenant had notice that the landlord still intended to pursue the 2 Month Notice at this hearing and she did not waive the notice.

Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the landlord's 2 Month Notice, dated November 30, 2015. I grant an order of possession to the landlord effective at 1:00 p.m. on February 29, 2016, the corrected effective date of the 2 Month Notice.

The above effective date is automatically corrected from January 31, 2016, as per section 53 of the *Act*, which says that the tenant must be given two full months' notice and that the notice is effective on the day before rent is due, which is the first of the month in this case. Therefore, as the tenant received the 2 Month Notice on December 3 or 4, 2015, the effective date of January 31, 2016, is incorrect in any event. The correct effective date is February 29, 2016.

As the landlord has not yet cashed the tenant's post-dated rent cheque for February 2016, the landlord should take note of the following section of the *Act*:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if
(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the tenant was unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee paid for his Application. The tenant must bear the cost of his own filing fee.

As the landlord was successful in her application, I find that she is entitled to recover the \$50.00 filing fee paid for her application.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I allow the landlord's application. I grant an **Order of Possession to the landlord effective at 1:00 p.m. on February 29, 2016**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to deduct \$50.00 from the tenant's security deposit of \$625.00 in full satisfaction of the monetary order for the filing fee. The remainder of the tenant's security deposit in the amount of \$575.00 is to be dealt with at the end of this tenancy in accordance with section 38 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 *Residential Tenancy Act*.

Dated: February 05, 2016

Residential Tenancy Branch

