



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, FF

Introduction

This hearing dealt with cross-applications under the *Residential Tenancy Act* (the “Act”) based on a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated March 19, 2017 (the “2 Month Notice”). The tenants applied to cancel the 2 Month Notice. The landlords applied for an order of possession based on the two month notice. Both parties also sought recovery of the application filing fee.

Both of the tenants attended the hearing with an advocate who also acted as a translator. One of the landlords’ daughters attended on behalf of the landlords. Both parties had the opportunity to be heard, to present their affirmed testimony, to make submissions and to respond to the submissions of the other party.

Service of the applications and notices of hearings was not at issue.

Issues

Should the 2 Month Notice be cancelled?

If not, are the landlords entitled to an order of possession?

Is either party entitled to recover the application filing fee?

Background and Evidence

No written tenancy agreement was in evidence. The tenants testified that this tenancy began in December of 2010. Monthly rent in the current amount of \$1,050.00 is payable on the first day each month.

The landlords issued the 2 Month Notice, with an effective move-out date of May 31, 2017, for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

It was agreed that the tenants were personally served with the 2 Month Notice on March 19, 2017. The tenants filed their application to dispute the 2 Month Notice on May 2, 2017.

The landlords' agent testified that the tenants have paid rent for June, 2017 but that the landlords have not deposited their cheque. The landlords' agent was advised that in these circumstances rent can be accepted for "use and occupancy" only.

The tenants testified that they did not file their application to dispute earlier because they did not understand the process. Their advocate stated that they filed their application to dispute immediately upon learning how the process works. The tenants also confirmed that they received both pages of the 2 Month Notice.

The tenants did not apply for more time to dispute the 2 Month Notice. Nor did they suggest that there was any extraordinary reason that would justify extending the time limit.

The tenants asked for additional time to reside in the rental unit in the event the landlords are granted an order of possession. They testified that things have been very upsetting for them and their children as a result of the landlords' attempt to end the tenancy and that their children are currently in school. They did not understand the process and did not understand that they could be required to vacate after this hearing. They also testified that they have filed a complaint against the landlords.

The landlord's agent in response questioned why the tenants would wish to remain in the rental unit in light of their allegations. She submitted that the order of possession should be granted immediately, that the tenants should have been preparing to relocate since receiving the 2 Month Notice, and that she was unwilling to wait any further as she had furniture arriving that would be going into the rental unit.

Analysis

Section 49(8) of the Act provides that 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.

Section 49(9) of the Act provides that a tenant who does not make an application for dispute resolution within 15 days of receipt is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

Here, the tenants received the 2 Month Notice on March 19, 2017 but did not file their application to dispute it until May 2, 2017. As a result the tenants are conclusively presumed to

have accepted that the tenancy ended on May 31, 2017, the effective date of the 2 Month Notice. The tenants should have vacated by that date.

Section 55(1) of the Act provides that if a tenant's application to cancel a notice to end tenancy is unsuccessful or if the notice to end tenancy is upheld, then I must grant an order of possession, provided the notice complies with s. 52. I find that the landlords' 2 Month Notice complies with s. 52. Section 55(2)(b) also authorizes me to grant an order of possession in the circumstances.

Section 55(3) authorizes me to grant an order of possession before or after the date the tenant is required to vacate, and provides that the order takes effect on the date specified in the order.

Because the tenants' understanding may have been compromised by the fact that English is not their first language, because they have paid rent for June, and because they have children in school, I grant an order of possession effective June 30, 2017.

Conclusion

The tenants' application to cancel the landlords' 2 Month Notice is refused. The landlords' 2 Month Notice upheld.

I grant an order of possession effective at **1:00 pm on June 30, 2017**. Should the tenants or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

As the landlords' application is successful, the landlords are entitled to recover their \$100.00 filing fee from the tenants. I authorize and order the landlords to retain \$100.00 from the tenants' security deposit in full satisfaction of this amount.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: June 07, 2017

Residential Tenancy Branch