



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, OPL

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession based on a 2 month Notice to End Tenancy for landlord use.
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on May 4, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on May 29, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a month to month oral tenancy agreement that provided that the tenancy would start on January 25, 2017. The rent is \$375 per month payable on the first day of each month. The tenant paid a security deposit of \$187.50 at the start of the tenancy.

The Tenant is visually impaired and as a result of this disability he is unable to read. He is a refugee from the United States has applied for refugee status. He was living in

a refugee home when he arrived from the USA. He is an accomplished musician. In January 2017 he met the male landlord and the male landlord offered that he could live with them for a period of time.

The landlords have 3 daughters. They have rented out two other rooms in the basement to other tenants for \$550 each. They agreed the tenant could live in a third room in the basement. The landlord previously used that room for their own family needs.

The tenant obtained assistance from welfare. In February he gave the landlord three cheques. One was for \$375 being the rent for January 2017. The second cheque was for \$375 being the rent for February 2017. The third cheque was for \$187.50 being a security deposit. The landlord returned \$330 of the rent for January as the tenant had lived in the rental unit for 6 days only in that month. The landlord testified they felt sorry for the tenant's situation and wanted to help. The tenant testified the landlord was forced to do so.

On May 4, 2017 the landlord served a 2 month Notice to End Tenancy on the tenant that set the end of tenancy for July 4, 2017. The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- 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

The landlord testified that they need the rental unit which the tenant is living in for their own family needs. They have 3 daughters and it did not work out having the use of one bathroom only.

The tenant disputes this evidence. It appears the relationship between the parties has become strained. The tenant complained that one of the daughters is not living at home at present. The landlord testified she is dancing in the United States and is scheduled to return home on July 29, 2017.

The landlord produced video evidence which shows the service of the 2 month Notice to End Tenancy. The video shows the landlord explaining what the document is and also explaining that he has 15 days to dispute the Notice should he wish to.

The landlord produced video evidence which shows the service of the Application for Dispute Resolution package on the Tenant on May 29, 2017. The landlord summarized

the document and that she was seeking an Order of Possession. During the video it shows the tenant telling the landlord that he will bring the package to the Disability Alliance of BC as they are his advocates and will help him read the package.

At the hearing the tenant testified he visited the Residential Tenancy Branch in the first or second week of June and received information from an Information officer regarding the hearing package.

The landlord testified that she has talked to the Residential Tenancy Branch and now recognizes she made a mistake in setting the end of tenancy date for July 4, 2017. She should have set the date for July 31, 2017. She advised the tenant of this mistaken date. She further testified she has not received the rent for July. She understands that the tenant is entitled to withhold the last month rent to satisfy the obligation under the landlord to give the tenant the equivalent of one months rent under section 51(1) of the Act which provides as follows:

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.

The tenant(s) continues to reside in the rental unit. .

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a 2 month Notice to End Tenancy on May 4, 2017. The Notice to End Tenancy is in the approved form. Section 49(5) and (6) provide as follows:

49(5) 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.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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.

The tenant has not filed an Application for Dispute Resolution to dispute the Notice and the time to do so has expired. I do not accept the submission of the Tenant that he is excused from filing an Application because of his visual impairment for the following reasons:

- I accept the testimony of the tenant that he is visually impaired and is unable to read. However, the landlord advised him on May 4, 2017 that he had 15 days to dispute the Notice to End Tenancy should he wish.
- The tenant was served with the hearing package on May 29, 2017. The video evidence indicates he told the landlord that he would bring the package to the disability Alliance of Bac as they are his advocates. The tenant further testified he visited the Residential Tenancy Branch around the first or second week of June and talked to an information officer. He would have been told of the obligation to file an Application for Dispute Resolution to dispute the Notice. At that time he could have applied for arbitration and sought more time to make the application on the basis that exceptional circumstances exist (his visual impairment). It is possible the arbitrator would have granted an extension of time to file the application had he made an application. .
- The tenant has not filed an Application for Dispute Resolution to dispute the Notice to End Tenancy. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. An arbitrator does not have the authority to cancel a Notice where it is in the approved form and the tenant has not applied to dispute it.
- I have carefully considered all of the evidence. I determine the landlord would be entitled to an Order of Possession on the merits. I accept the landlord's testimony the present situation is not working for her family and they need the space to properly house her family including her three daughters.

The landlord failed to properly identify the end of tenancy date on the Notice to End Tenancy. The Act provides that the end of tenancy date must be at the end of the rental payment period. The Act corrects and incorrectly dated notice. In this case the corrected end of tenancy date is July 31, 2017.

Accordingly, I granted the landlord an Order for Possession effective July 31, 2017. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

I dismissed the landlord's claim to recover the cost of the filing fee. The landlord failed to the correct end of tenancy date on the Notice and as a result the landlord is not entitled to recover the cost of the filing fee from the tenant.

This decision is final and binding on both parties.

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: July 13, 2017

Residential Tenancy Branch