



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing was convened in response to the Landlord's Aug. 2, 2018 application for an order of possession pursuant to the *Residential Tenancy Act* section 55 and repayment of the application filing fee pursuant to section 72.

The timing of the Landlord's service of the application package, including evidence and notice of the hearing, was undisputed by the tenant and I find the tenant was duly served with documentation in accordance with sections 88 and 89 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, to call witnesses and to question one another.

The parties were given an opportunity to compromise and arrive at a mutually agreeable date the tenant would vacate, but to no avail.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 55?

Is the landlord entitled to recover the cost of filing this application pursuant to section 72?

Background and Evidence

The landlord entered into written evidence a Two Month Notice for Landlord's Use of Property ("the Notice" - form #RTB-32), as well as Proof of Service – Notice to End Tenancy (form #RTB-34). The Notice 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.*

The tenant does not dispute the landlord served her with the Notice in person on May 26, 2018 and the Notice gave her until July 31, 2018 to vacate. The tenant testified she needs longer than two months to move out and believes the Landlord does not have a valid reason to end the tenancy.

The tenant testified that on June 12, 2018 she tried to apply on-line to dispute the Notice, but her fee waiver application did not go through and when she checked, her application showed as abandoned. She testified that she called the Residential Tenancy Branch for assistance but they told her the Landlord had already filed an application so she did nothing further.

The tenant testified the purchaser of the rental unit is going to tear it down and build a parking lot. She believes a notice to end the tenancy cannot be valid until the Landlord has the permits in place for the demolition.

The Landlord testified he did not have a letter from the purchaser stating what purpose the landlord would use the rental unit for and referred to a condition in the purchase of sale agreement stating the purchaser requires vacant possession.

Analysis

The Notice was issued by the Landlord pursuant to section 49(5):

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
- (b) all the conditions on which the sale depends have been satisfied, and*
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

Section 49(7) states:

A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I have carefully reviewed the Notice and I am satisfied that the landlord's Two Month Notice entered into written evidence complies with the content requirements of sections 49(7) and 52 of the Act.

With regard to disputing the Notice, Sections 49(8) and 49(9) state:

(8) A tenant may dispute

*(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution **within 15 days** after the date the tenant receives the notice...*

*(9) 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.*

The tenant had 15 days after May 26, 2018 to make an application for dispute resolution and she did not do so.

The tenant testified she started to file an application with the Residential Tenancy Branch on June 12, 2018, which was the last possible date to file her application within the legal deadline. RTB records do show the tenant attempted to file an Application but that it was abandoned. She testified she did not seek assistance with the application until after the Landlord had already filed his application in early August. Regardless, the result is the tenant failed, at any time to complete an Application to dispute the Notice to End Tenancy.

As a result and pursuant to section 49(9), I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

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

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by September 30, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I grant the Landlord his application and grant him an Order of Possession and award him the cost to file this application as he was successful and grant a monetary order in the amount of \$100.00.

This monetary order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 24, 2018

Residential Tenancy Branch