



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

On November 6, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. K.C. attended the hearing claiming to be the Landlord and appearing on behalf of the Tenant. J.B. attended as an advocate for the Tenant and stated that he was the partner to K.C. L.C. attended the hearing claiming to be the actual Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served K.C. the Notice of hearing package by hand on November 20, 2019 and she confirmed that she received this package. The Tenant also advised that she served L.C. the Notice of Hearing package by registered mail on November 20, 2019 and he confirmed that this package was received on November 22, 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Respondents were served the Notice of Hearing package.

The Tenant submitted a significant volume of evidence to the Residential Tenancy Branch; however, she advised that the only piece of evidence she served to the Landlords was a copy of the tenancy agreement, and that this evidence was included in the Notice of Hearing packages. K.C. and L.C. both confirmed that they received this evidence. As this evidence was served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted only this document from the Tenant's evidence, and I will consider it when rendering this decision. Any other evidentiary submissions that the Tenant provided to the Residential Tenancy Branch will be excluded and will not be considered when rendering this decision.

L.C. advised that his evidence was served to the Tenant on December 6, 2019 by registered mail. The Tenant confirmed receipt of this evidence and she was satisfied that she had adequate time to review it. Based on the undisputed testimony, I am satisfied that service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to an Order for the Landlords to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.C. provided context for the relationship between the parties. He advised that he had been married to K.C. and that they owned the property (herein referred to as "A") together. In 2004, they experienced marital difficulties and a separation agreement was drafted where ownership of A was legally transferred on title from both their names to be solely in the name of L.C. A copy of this Land Title Act ownership document was submitted as documentary evidence.

Subsequent to this, they attempted to reconcile their differences, they continued to live together in A, and they constructed the rental unit on the property (herein referred to as "B"). He stated that the funds used to construct B were from an inheritance of his. In

2011, they separated permanently and he lived in B while K.C. lived in A. In 2015, he vacated B and his intention was to rent to a tenant for \$1,800.00 per month and collect rent from K.C. for \$1,000.00 per month. However, he stated that K.C. "convinced" him to rent to the Tenant for \$1,800.00 per month and he allowed this arrangement to happen. He advised that K.C. was acting as an agent for him, but it was his opinion that this arrangement would not divest him of any future input.

L.C. advised that the Notice was served to the Tenant by hand on October 30, 2019 and the Tenant confirmed that she received this Notice on this date. The reason he served the Notice is because it is his belief that K.C. was acting as an agent on his behalf, that he is the owner of the property and therefore the Landlord, and that he would like to occupy the rental unit. The Notice indicated that the effective end date of the tenancy would be December 31, 2019.

J.B. advised that this is a property ownership dispute between L.C. and K.C. He stated that they remained married despite their physical separation and that K.C. invested significant amounts of her own money into B.

K.C. stated that after L.C. left B in 2015, she moved in there and rented out A to the Tenant until 2018. Then, the Tenant moved into B and K.C. moved into A. With respect to this Application, K.C. advised that she rented out B to the Tenant for \$1,800.00 per month, and she listed herself as the Landlord on the tenancy agreement. She confirmed that she was doing so as an agent for L.C. A copy of the tenancy agreement was submitted as documentary evidence.

While she confirms that she is not listed as an owner on title, she pays for repairs on B and she is still married to L.C. She stated that the mortgage is in L.C.'s name, but the \$1,800.00 rent she receives from the Tenant gets paid from her account towards the \$2,136.00 monthly mortgage payment, and then she pays the balance. She stated that she was a co-signor of the mortgage. It is her position that she is an owner of B, that she is the Landlord to the Tenant, and that she did not authorize service of the Notice.

The Tenant disputed the Notice on the basis that the Notice is not valid because L.C. is not her Landlord. According to the tenancy agreement, K.C. is her Landlord and K.C. did not serve this Notice. She did not make any submissions with respect to disputing the reason L.C. checked off on the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that a Landlord may end a tenancy if the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit, pursuant to Section 49 of the *Act*. This is straightforward; however, the crux of this dispute is whether L.C. meets the definition of a Landlord under the *Act* and whether he was permitted to serve the Notice as Landlord to the Tenant.

Section 1 of the *Act* defines a Landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) permits occupation of the rental unit under a tenancy agreement, or*
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

When reviewing the testimony of the parties, while it is K.C.'s position that she is an owner and also the Landlord to the Tenant, clearly there is a property ownership dispute between L.C. and K.C. However, that disagreement is beyond the purview of my jurisdiction to make any determination on.

The consistent and undisputed evidence before me is that the title of the property is solely in the name of L.C., that the mortgage on the property is in his name exclusively, that the \$1,800.00 rent collected from the Tenant has been benefitting L.C. as it has been paid towards his mortgage, and that K.C. has been acting as an agent for L.C. I find it important to note that K.C. has not provided any evidence to refute these details.

Consequently, I am satisfied from the undisputed evidence that the property was transferred solely to L.C. in 2004 and that K.C. has been acting as an agent for him by administering the affairs of the property. As K.C. was simply an agent for L.C., I am satisfied that L.C. would be considered a Landlord under the *Act* and that he would have been entitled to serve the Notice to the Tenant.

As this was the only reason for the dispute and the only issue to consider, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not made any

submissions with respect to the reason on the Notice, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 49 and 55 of the *Act*. Moreover, to avoid further confusion, the Order of Possession will be issued only in the name of the L.C., the Landlord.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on December 31, 2019 after service of this Order** on the Tenant. 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.

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: December 19, 2019

Residential Tenancy Branch