



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, LAT, OLC, MNDCT, OT, CNL (Tenant's Application)
OPL, FFL (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application filed on February 21, 2020, the Tenant sought the following relief:

- an Order restricting the Landlords' right to enter the rental unit;
- an Order permitting the Tenant to change the locks on the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement;
- monetary compensation from the Landlord; and,
- an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on February 21, 2020 (the "Notice").

In the Landlord's Application filed on March 3, 2020, the Landlord sought an Order of Possession based on the Notice and recovery of the filing fee.

The hearing of the parties' Applications was scheduled for teleconference at 11:00 a.m. on April 6, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by Rule 1.1 which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly, I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

For reasons which will be addressed later in this my Decision, claims relating to the continuation of this tenancy are dismissed without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's realtor testified as follows. The tenancy began January 9, 2020. Monthly rent is \$1,550.00. The Landlord's realtor stated that the Tenants rents two bedrooms in a three-bedroom home. She stated that the person who rents the third bedroom has moved out of the rental unit.

The Landlord's realtor confirmed that the rental property has sold and the buyers have requested vacant possession. The details of the sale are as follows: the property was listed for sale on January 28, 2020; they had an accepted offer on February 8, 2020;

and, the subject removal date was February 21, 2020. The original completion date was March 3, 2020; however, the seller and buyer amended the contract of purchase and sale to provide that the completion and possession date were May 1, 2020. Introduced in evidence was a letter from the buyer dated February 19, 2020 in which the buyer requested vacant possession.

The realtor confirmed that she does not have any reason to believe that the new owner does not intend to live in the property.

The realtor stated that the Tenant has not paid rent for the month of April 2020 as he was provided a free month's rent pursuant to the Notice.

The Tenant testified as follows.

He stated that his tenancy began November 27, 2019. He further stated that his monthly rent is \$1,550.00. The Tenant noted that when he first moved into the rental property the Landlord resided in one of the bedrooms. He confirmed that she moved out before Christmas 2019 at which time he believed he was renting the entire home; however, he stated that following this the Landlord rented her bedroom out to a third party.

The Tenant denied receiving the Notice on February 21, 2020. He testified that the Landlord delivered a Mutual Agreement to End Tenancy on February 21, 2020. The Tenant stated that he spoke to the Landlord's realtor on March 2, 2020, at which time he explained to her that if they wanted him to move out of the rental unit, they would need to issue a 2 Month Notice to End Tenancy on Form 32. The Tenant stated that he received the Notice on March 3, 2020 which he claimed was posted on his door. The Tenant alleged that the Landlord "back dated" the Notice. The Tenant stated that the document could not have been dated February 21, 2020 as at that time the Landlord's realtor didn't even know what a 2 Month Notice was.

The Tenant testified that he was not aware the Landlord intended to sell the rental property, until just before New years. The Tenant confirmed that he is aware the property has sold. The Tenant stated that it was his understanding that the new owner was originally willing to take on his tenancy, however he confirmed that he was later made aware the new owners wish to reside in the rental property. He further confirmed that he had no reason to believe they would not reside in the rental unit.

In reply, the Landlord's realtor stated that on February 21, 2020 she provided the Tenant with a Mutual Agreement to End Tenancy and when he refused to sign it she served him the Notice and provided him the contract of purchase and sale as well as the letter from the buyers confirming they wanted vacant possession.

The Landlord also provided in evidence a copy of a Proof of Service, Notice to End Tenancy, confirming that the service of the Notice occurred on February 21, 2020 and was witnessed by a third party, B.W.

Analysis

A landlord may end a tenancy for their own use provided they do so in accordance with the *Residential Tenancy Act*. In this case, the Landlord seeks to end this tenancy pursuant to section 49 of the *Residential Tenancy Act*; the relevant portions of section 49 read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

...

(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;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

...

(7) 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.

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

On balance, I find the Tenant was served the Notice on February 21, 2020. While the Tenant denies this occurred, claiming that he only received the Mutual Agreement to End Tenancy at this time, I am persuaded by the Landlord's Realtor's testimony as well as the Proof of Service filed in evidence. I find the Proof of Service corroborates the Landlord's Realtor's testimony such that I prefer her testimony of that of the Tenant's.

The Notice informed the Tenant that the rental property had sold and the buyers asked for vacant possession as they intend to reside in the rental property. I was not provided any evidence to support a finding that the buyers were not planning to live in the rental property. Further, the buyer's intentions were not questioned by the Tenant as he conceded that he had no reason to believe they would not live in the rental property.

As such, I find the Notice is valid. I therefore dismiss the Tenant's request that I cancel the Notice.

Pursuant to sections 49 and 55 of the *Act*, the Landlord is granted an Order of Possession effective May 1, 2020. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the

suspension of regular court operations of the BC Supreme Court and Provincial Court.

As the Landlord has been successful in their Application, they are entitled to recovery of the \$100.00 filing fee. Pursuant to section 38 and 72 of the *Act* the Landlord may retain \$100.00 from the Tenant's security deposit.

The Landlord is reminded that while the Tenant remains in occupation of the rental property, he entitled to quiet enjoyment of the rental unit. Further, the Landlord is reminded that she must provide notice to enter the rental unit as required by section 29 of the *Residential Tenancy Act*.

Conclusion

The Tenant's Application for an order canceling the Notice is dismissed without leave to reapply.

The Tenant's Application monetary compensation from the Landlord is dismissed with leave to reapply.

The Tenant's Application for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and/or the tenancy agreement is dismissed without leave to reapply.

The Tenant's Application for an Order authorizing him to change the locks on the rental unit is dismissed without leave to reapply.

The Tenant's Application for an order limiting the Landlord's right to enter the rental unit is dismissed without leave to reapply. The Landlord is cautioned that she must respect the Tenant's right to quiet enjoyment of the rental unit as protected by section 28 of the *Act* and must give the Tenant notice to enter the rental unit pursuant to section 29.

The Landlord's Application for an Order of Possession is granted. The Order is effective May 1, 2020.

The Landlord's Application for recovery of the filing fee is granted; to this end the Landlord may retain \$100.00 from the Tenants' security deposit.

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: April 17, 2020

Residential Tenancy Branch