



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDCL-S, FFL

Introduction

On March 15, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on 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 a Monetary Order for compensation pursuant to Section 67 of the Act, and seeking to recover the filing fee pursuant to Section 72 of the Act.

The Landlord attended the hearing with G.S. attending as an agent for her. The Tenant attended the hearing with A.Q. and B.V. attending as her advocates. All in attendance provided a solemn affirmation.

G.S. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on March 25, 2020 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Tenant was served the Landlord's Notice of Hearing and evidence package.

The Tenant advised that she served her evidence to the Landlord on April 9, 2020 by registered mail and G.S. confirmed that the Landlord received this package. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

During the hearing, I advised the Landlord that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Landlord that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that her other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

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.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord 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.

All parties agreed that the tenancy originally started on September 1, 2015 and the Landlord subsequently purchased the rental unit in 2016. A new tenancy agreement was never signed. Rent was currently established at \$922.00 per month and was due on the first day of each month. A security deposit of \$450.00 was also paid. A copy of the original tenancy agreement was submitted as documentary evidence.

G.S. submitted that the Notice was posted on the Tenant's door on February 3, 2020. The reason the Landlord checked off on the Notice was because "All of the conditions for the 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 effective date of the Notice was noted as April 30, 2020.

The Tenant acknowledged that she received this on February 3, 2020 and that she did not dispute the Notice as it was her intention to move. However, those efforts were hindered due to the pandemic crisis.

G.S. advised that the Landlord signed a Contract of Purchase and Sale on January 19, 2020 and the subjects were removed on January 21, 2020. Furthermore, the seller provided the Landlord with signed Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession form, dated January 31, 2020. He referenced the documentary evidence submitted to support the Landlord's position that all of the conditions for the 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 advised that she had known the Landlord wanted to sell the property for the last year; however, she only started looking for a new place when she received the

Notice. She has made attempts to move, but it is increasingly difficult, if not impossible, in the current pandemic climate.

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.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit being sold to a party where the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit. Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant received the Notice on February 3, 2020. As the fifteenth day fell on Tuesday February 18, 2020, the Tenant must have made her Application by this date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

I find that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on February 3, 2020 complies with the requirements set out in Section 52. As I am satisfied of the undisputed evidence supporting the reason the Notice was served, 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 complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of the *Act*, I allow the Landlord to retain this amount from the security deposit.

Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on April 30, 2020 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. The Landlord should take special note of the ability to enforce Orders of Possession, outlined on the next page, during the current State of Emergency.

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 21, 2020

Residential Tenancy Branch