



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55;

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 10:00 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord's counsel stated that on April 27, 2020, copies of the Application for Dispute Resolution and Notice of Hearing was sent to both tenants by registered mail. Registered mail receipts and tracking numbers were provided in support of service.

Based on the above evidence, I am satisfied that the tenants were served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Preliminary Issue – Combining of two separate tenancies in one application

During the hearing, it was clarified by the landlord that this application involved two separate tenancies. The landlord was renting individual bedrooms the two tenants named in this application within the same house. The landlord's counsel submits that the basis for ending both tenancies is the same due to a Supreme Court Order and both parties were individually served with the Application and Notices to End Tenancy. The landlord's counsel submits that both tenancies are under the same physical address and joining the two in one application should not prevent the orders being sought.

Although applications under the Act typically relate to one specific tenancy or multiple applications heard jointly, I find that since both parties have been individually named and served with this application and both fall under the same address, I permitted the landlord's application to proceed.

Issues

Is the landlord entitled to an order of possession pursuant to a One Month Notice to End Tenancy for Cause (the One Month Notice)?

Background and Evidence

The tenancy both began approximately two years ago.

The landlord testified that on January 23, 2020 he served both the tenant with a One Month Notice by sliding a copy under their individual bedroom doors. Witnessed Proof of Service forms of the Notices to End Tenancy were provided on file. The effective date of the One Month Notices was February 29, 2020.

The landlord's counsel submits that neither of the tenants have vacated the rental unit as per the effective date of the Notice or filed an application to dispute the One Month Notices.

Landlord's counsel submits the One Month Notices were issued on basis of complying with a government order to vacate the rental unit. The landlord submitted a copy of a Supreme Court Order dated January 21, 2019 requiring the landlord to cease utilizing the dwelling unit for occupancy by more than one household.

The landlord's counsel further requests an order of possession be granted pursuant to section 56 of the Act. The landlord's counsel submits that the ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL (Ministerial Order No. M089) permits an order of possession be granted under section 56 in the case the rental unit is required to be vacated to comply with a government order.

Analysis

I am satisfied that the tenants were deemed served with the One Month Notice on January 26, 2020, three days after being slid under the door, pursuant to sections 88 & 90 of the Act.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Under this section, the tenant may make a dispute application within ten days of receiving the One Month Notice. If, as in the present case, the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice.

I find that the One Month Notices comply with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 4(1) of the ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL (Ministerial Order No. M089) states as follows:

Subject to subsection (2) of this section, in addition to the orders that the director may grant under sections 54, 55, 56 and 56.1 of the *Residential Tenancy Act*, the director may grant an order, on application by a landlord under section 56 (1) of the *Residential Tenancy Act*, specifying an earlier date on which a tenancy ends and the effective date of the order of possession if the director is satisfied that

- (a) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the *Emergency Program Act*, and
- (b) it would be unreasonable to wait for this order to no longer apply.

Under normal circumstances, section 56(1) of the Act does not contain an avenue for a landlord to end a tenancy early as a result of a requirement to comply with a government order. The emergency order cited above does create this avenue for applications made under section 56(1) of the Act. The Director must also be satisfied that it would be unreasonable to wait for the emergency order to no longer apply. I find that the landlord's application was not initiated pursuant to section 56(1) of the Act. Further, I am not satisfied that it would be unreasonable for the landlord to wait for the emergency order to no longer apply. The Supreme Court Order referred to by the landlord is dated January 21, 2019 which was issued well before the emergency order of March 30, 2020; therefore, the emergency order would trump the Supreme Court order unless there is evidence to the contrary.

The landlord's request to have the order of possession granted under section 56 of the Act is declined.

Conclusion

I grant an Order of Possession to the landlord effective **two days 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: May 26, 2020

Residential Tenancy Branch