



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”) to enforce a One-Month Notice to End Tenancy for Cause, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord’s Advocate (the “Landlord”) and one of the Tenants (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. All parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter - Amendment

At the outset of these proceedings, it was noted that the Landlord had applied to enforce a One-Month Notice to End Tenancy for Cause, but that a Two Month Notice to End Tenancy for Landlord’s Use of Property had been submitted into documentary evidence, by the Landlord.

The Landlord confirmed that they had selected the wrong code on their application for these proceedings.

The Tenant confirmed that they had received a Two Month Notice to End Tenancy for Landlord’s Use of Property.

Section 4.2 of the Residential Tenancy Branches Rules of Procedure state the following:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that this Tenant could have reasonably anticipated this amendment request. Therefore, I grant the Landlord's request to amend their application during this hearing.

I will proceed on the Landlord's amended application to enforce a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice"), issued on July 3, 2020, and for the recovery of the filing fee for this application.

Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 55 of the *Act*?
- Is the Landlord entitled to the recovery of their filing fee for this application?

Background and Evidence

The Landlord testified that they served the Notice to the Tenant on July 3, 2020, by registered mail. The Notice indicated an end of tenancy date of September 30, 2020. The Landlord submitted a copy of the Notice into documentary evidence.

The Tenant testified that they received the Notice and did not wish to dispute the Notice. The Tenant testified that they did not know why the Landlord required a hearing, as they would move out in accordance with the Notice.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

I find that the Tenant had received the Notice to end the tenancy on July 8, 2020, five days after it was sent to them by registered mail, pursuant to the deeming provisioning set out in section 90 of the *Act*. Section 49 of the *Act* requires that upon receipt of a Notice to End Tenancy for Landlord Use of the Property, a tenant must, within 15 days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 49(9) of the *Act*.

Landlord's notice: landlord's use of property

49 (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, or
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 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.

Pursuant to section 49(8) the *Act*, the Tenant had 15 days to dispute the Notice. I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, I find that the Tenants are conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

I have reviewed the Notice, and find that this Notice issued on July 3, 2020, is valid and enforceable.

Accordingly, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 1:00 p.m. on September 30,

2020. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, I decline to award the Landlord the recovery of the filing fee paid for his application.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on **September 30, 2020**. The Tenants must be served with this Order. Should the Tenants 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: September 3, 2020

Residential Tenancy Branch