



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, FFL**

Introduction

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

- An Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing and the landlord attended the hearing represented by his counsel, MS. As both parties were present, service of documents was confirmed. The tenant acknowledged being served with the landlord's Application for Dispute Resolution and evidence; the landlord acknowledged service of the tenant's evidence package. Both parties stated they had no issues with timely service of documents.

Issue(s) to be Decided

Should the landlord's Two Month's Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

A copy of the tenancy agreement was provided as evidence. The tenancy began on August 1, 2012 and states that the tenancy is for a fixed length of time (1 year) ending on July 31, 2013. Neither party put a “check” in the box to signify whether option i) or ii) would happen at the end of the fixed length of time. The first box (i) reads in full, “*the tenancy may continue on a month to month basis or another fixed length of time”*. (underlined in the original tenancy agreement). The landlord did, however initial in the spot where the agreement states the second option ii) “*the tenancy ends and the tenancy must move out of the residential unit...*” The tenant did not initial. Both parties are required to initial this spot if option (ii) is chosen.

The landlord’s counsel submits the following. At no time during the initial stage of the fixed term tenancy, nor at any time after the initial year ended on July 31, 2013 did the landlord or the tenant enter into a new fixed term tenancy. By virtue of section 44(3) of the Act, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy agreement on the same terms.

In July of 2020, the landlord notified the tenant by email that he was planning on selling the rental unit. A buyer was found, and that buyer provided the landlord with notice to the seller for vacant possession. The notice requests the landlord give notice to the tenant to terminate the tenancy and give the buyer vacant possession by 1:00 p.m. on October 31, 2020.

On August 27, 2020, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord’s Use by posting it to the door of the tenant’s rental unit. A witnessed proof of service document was provided as evidence and the tenant testified that she received the notice on August 27, 2020. The notice has an effective date of October 31, 2020 and the reasons for ending the tenancy are:

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 close family member intends in good faith to occupy the rental unit.

The tenant gave the following testimony. When she received the landlord’s notice, she didn’t dispute the notice itself, but disputed the effective date. She didn’t file an Application for Dispute Resolution because she looked at section 53 of the Act and was satisfied that if the effective date is wrong, it would be self-corrected to a date that is correct. She looked at the Residential Tenancy Branch website, trying to resolve the question of the wrong date but after reviewing it, repeated that she didn’t think she needed to dispute the notice because of the self-correcting provision of section 53. She doesn’t dispute the notice per-se, just the effective date.

The tenant argues that since the tenancy agreement is underlined another fixed length of time, this means that the landlord and the tenant are deemed entered into a further one-year fixed term that neither party can break. Each year, on July 31st, the fixed term tenancy ends and the parties are bound to a new one expiring on July 31st.

The tenant submits that because the parties are bound to a fixed term, the landlord cannot end the tenancy until the tenancy is due to end, on July 31st.

Analysis

Based on the testimony of the tenant acknowledging she received the landlord's Two Month's Notice to End Tenancy for Landlord's Use on August 27, 2020, I am satisfied that she was served on that date in accordance with sections 89 and 90 of the Act.

The landlord served the notice to end the tenancy pursuant to section 49(5) of the Act because the purchaser of the rental unit gave notice that he or a close family member of his was going to occupy the rental unit. The tenant testified she did not dispute the reasons for ending the tenancy. I find the reason for ending the tenancy provided on the notice is valid.

Section 49(8)(a) of the Act states:

A tenant may dispute 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.

Section 49(9) states:

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.

The tenant testified that she did her own research and did not file a dispute to the landlord's notice because section 53 of the Act self-corrects the effective date. I have reviewed the landlord's notice and I find there is no error stated in the effective date provided on the notice. As I have found the tenant was served with the Two Month's Notice to End Tenancy for Landlord's Use on August 27, 2020, the effective date of October 31, 2020 (more than 2 months later) complies with the required notice period. I find section 53 of the Act has no bearing on this notice.

The tenant did not dispute the notice within 15 days of receiving it on August 27, 2020. By virtue of section 49(9) of the Act, the tenant is conclusively presumed to have accepted the tenancy ends on October 31, 2020 and should have vacated by that date. As this has not happened, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

As the tenant is conclusively presumed to have accepted the tenancy ends, her argument that the parties are bound to automatically renewed one-year tenancies at the conclusion of the first tenancy is not an issue that can be disputed. In order to put forth that argument, the tenant was obligated to file a formal application to dispute the notice, which she has not. As such, the merits of the tenant's argument will not be determined in this decision.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions of section 72, the landlord may retain \$100.00 of the tenant's security deposit at the conclusion of the tenancy.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: November 27, 2020

Residential Tenancy Branch