Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. The landlord was assisted by counsel BK. Witness for the landlord MC also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Jurisdiction

Section 58(2)(c) of the Act provides that a dispute linked substantially to a matter that is before the Supreme Court is outside the jurisdiction of the Residential Tenancy Branch. Respondent KC affirmed this is a family matter and should be heard at the BC Supreme Court.

The applicant affirmed he separated from respondent KC on June 30, 2014. A separation agreement dated June 30, 2014, signed by both parties in the presence of a counsel, was submitted into evidence. It states in part:

G. Final Agreement.
[Applicant and respondent] intend this Agreement to be:
b) the final settlement of their respective rights in or to the property of the other and the property held by them jointly,
c) the final settlement of their respective rights in the estate of the other.

LIVE SEPARATE AND APART
3. The parties will continue to live separate and apart and be free from the control of each other

The applicant purchased the manufactured home after the separation on April 06, 2017 (a manufactured home title was submitted into evidence). The applicant said he did not reconcile with respondent KC. Since the separation agreement the applicant and respondent KC lived at the same address sometimes for a few months to care for their son JC, but never as a couple. Counsel BM and witness MC also stated the applicant did not reconcile with respondent KC.

Respondent KC stated she did reconcile with applicant BC and he declared in his income tax return that he is married to KC. The manufactured home was purchased with the intention of proving a home to respondent JC.

Both parties agreed in February 2020 a no-contact order was issued by the Supreme Court of British Columbia prohibiting the applicant from having any contact with the respondents. This order, valid until March 23, 2021 is not related to a family law matter, but to a criminal law matter.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The parties offered conflicting testimony about reconciliation. In cases where two parties to a dispute provide equally plausible account of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish her claim.

I have carefully reviewed the testimony offered by both parties. The respondent did not provide any documentary evidence to support her claim that this dispute is related to a matter before the Supreme Court and did not call any witnesses. The applicant provided a separation document and both the witness and counsel provided testimony that the

applicant and respondent KP did not reconcile. Therefore, I find the applicant did not reconcile with respondent KP and this application is not related to a family matter before the Supreme Court.

As such, I find I have jurisdiction to hear this matter.

Issues to be Decided

Is the landlord entitled to:

01. an order of possession under the Notice?
02. an authorization to recover the filing fee for this application

Background and Evidence

While I have considered the documentary evidence and the testimony of the attending parties, not all details of the landlord's application and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained to the attending parties it is their obligation to present the evidence produced.

The rental unit is a manufactured home owned by the applicant. Both parties agreed the last time JC paid rent was in December 2018, there is no written tenancy agreement, there is no security deposit, the respondents have been paying the monthly rent for the manufactured home site and reside there under a license to occupy.

The applicant stated the respondents moved to the manufactured home in January 2018. Respondent KC affirmed she and JC moved to the manufactured home on April 06, 2017, when it was purchased by the applicant.

Both parties also agreed the Notice was served in person on July 13, 2020. The Notice was entered into evidence. The notice indicates the rental unit will be occupied by the applicant. The effective date of the Notice is September 30, 2020. The respondents did not file an application to dispute the Notice.

Analysis

I find the tenants received the Notice on July 13, 2020 in accordance with sections 88 (a) of the Act. I find the form and content of the Notice is valid pursuant to section 52 of

the Act, as the Notice is dated and signed, gives the address of the rental unit, states the effective date and is in the approved form.

Based on the both parties undisputed testimony I find that the tenants did not file an application to dispute the Notice within 15 days of receiving it, or at all. Pursuant to section 49(6)(a) the tenants are conclusively presumed to have accepted the end of the tenancy on September 30, 2020 and must vacate the rental unit. As this has not occurred, I find that the tenancy ended on September 30, 2020 and pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective two days after service.

As the applicant was successful, I find that the applicant is entitled to recover the $100.00 filing fee paid for this application.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective **two days after service of this order** on the tenants. 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

Pursuant to section 72 of the Act, I grant the landlord a monetary order in the amount of $**100.00**. The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 05, 2020

Residential Tenancy Branch