



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, FFL

Introduction

On October 30, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel 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") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 8, 2020, the Tenant also applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with M.G. attending as an agent for the Landlord. All parties in attendance, except for M.G., provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package and some evidence to the Landlord by registered mail on or around November 3, 2020; however, there was a problem with delivery by Canada Post. He stated that he re-served this package by registered mail on or around November 19, 2020, with the second Notice of Hearing package included as well.

M.G. confirmed that the Landlord received this package and took no issue with when it was served. However, the Landlord claimed that the second Notice of Hearing package pertaining to the dispute of the 10 Day Notice to End Tenancy for Unpaid Rent was not included in this registered mail envelope, and he was not aware that any such notice had been served. Based on this undisputed testimony, regarding the Notice of Hearing and evidence package pertaining to the Two Month Notice to End Tenancy for Landlord's Use of Property, I am satisfied that the Landlord was served that particular Notice of Hearing and evidence package.

However, with respect to the Notice of Hearing and evidence package pertaining to the 10 Day Notice to End Tenancy for Unpaid Rent, I have reserved judgement about service of this second Notice of Hearing and evidence package. This may be a moot point regardless, depending on the outcome of the Tenant's first dispute.

The Tenant advised that additional evidence submitted to the Residential Tenancy Branch on January 6, 2021 and January 19, 2020 was not served to the Landlord. As this additional evidence was not served to the Landlord in accordance with Rule 3.14 of the Rules of Procedure, this late evidence has been excluded and will not be considered when rendering this Decision. However, as the Landlord confirmed that he received the evidence served with the first Notice of Hearing package, only this evidence will be accepted and considered when rendering this Decision.

M.G. advised that the Landlord's evidence was served to the Tenant by registered mail on January 6, 2021 and the Tenant confirmed that he received this evidence. 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.

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 Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to have the 10 Day Notice for Unpaid Rent cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fees?

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 October 1, 2018 and that it was currently a month-to-month tenancy. Rent was established at \$3,485.00 per month and was due on the first day of each month. A security deposit of \$1,700.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

M.G. advised that the Notice was posted on the Tenant's door on October 17, 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 end date of the tenancy was noted as December 31, 2020 on the Notice.

The Tenant acknowledged that he received this Notice. As an aside, he also advised that a 10 Day Notice for Unpaid Rent was posted on his door on November 3, 2020. The Landlord had no knowledge of this notice ever being served to the Tenant.

M.G. referred to documents that were submitted as evidence to support the Landlord's position. He cited the Contract of Purchase and Sale to demonstrate that the Landlord sold the rental unit and that the purchasers wanted vacant possession on January 15, 2021. As well, documents were provided indicating that the subjects to the sale were removed on October 16, 2020 and that the purchasers asked the Landlord, in writing, to serve the Notice because the purchasers wanted to move in and occupy the rental unit. Finally, a statement from the purchasers was also included to support their intention to occupy the rental unit.

The Tenant made several submissions about his family and his inability to move because of his son's requirement to stay there for educational purposes. He then made many submissions about his attempts to convey to the Landlord and the purchasers that his situation would prevent them from being able to move. He suggested that his attempts to reason with the Landlord or purchasers were ignored. Apart from this, he did not make any submissions with respect to refuting the reason the Notice was served.

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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that the Notice meets all of the requirements of Section 52.

When reviewing the totality of the evidence before me, the undisputed evidence is that all of the conditions for the sale of the rental unit have been satisfied, that the purchaser asked the Landlord in writing to give this Notice, and that the purchaser or a close family member intends in good faith to occupy the rental unit.

I acknowledge that the Tenant believes that due to his personal, family circumstances, it would be detrimental to his family to have to move, and this would prevent him from moving altogether. However, the *Act* does not consider hardship or personal circumstances as a reason why a notice to end tenancy would not be valid. Furthermore, while the Tenant believes that his efforts to communicate with the Landlord and/or purchaser regarding his personal circumstances were ignored or not relayed, the *Act* has no jurisdiction over his dissatisfaction with the alleged lack of response.

It is clear that the Tenant was aware that the Landlord was attempting to sell the rental unit prior to service of the Notice, and there is no question that the Tenant was aware that it was sold once he had been served the Notice. Moreover, the purchasers are within their right to re-occupy the rental unit provided that certain requirements of the *Act* are fulfilled. As the undisputed evidence before me is that these requirements were met, and as the Tenant did not provide any evidence to refute this, I find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 p.m. on January**

31, 2021. The Landlord will be given a formal Order of Possession which must be served on the Tenant.

As an Order of Possession has been granted on the Two Month Notice to End Tenancy for Landlord's Use of Property, it is not necessary for me to consider the merits of the 10 Day Notice to End Tenancy for Unpaid Rent.

As the Tenant was not successful in either Application, I find that the Tenant is not entitled to recover either filing fee.

Conclusion

I dismiss the Tenant's Applications in full. The Landlord is provided with a formal copy of an Order of Possession effective at **1:00 p.m. on January 31, 2021**. Should the Tenant or any occupant on the premises 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: January 22, 2021

Residential Tenancy Branch