



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated January 27, 2021 ("Two Month Notice"); and to suspend or restrict the Landlord's right to enter.

An agent for the Landlord, Y.L. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. The teleconference phone line remained open for over 12 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on January 28, 2021; however, the Tenant did not attend the teleconference hearing scheduled for April 26, 2021 at 9:30 a.m. (Pacific Time).

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on April 26, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 12 minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application without leave to reapply.**

Preliminary and Procedural Matters

The Tenant provided his email address in the Application, and the Agent provided his in the hearing. The Agent also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession, and if so, when?

Background and Evidence

The Agent confirmed the evidence in the tenancy agreement, and corrected the date on which the tenancy began, which was February 1, 2019. The Agent confirmed that the Tenant was required by the tenancy agreement to pay the Landlord a monthly rent of \$5,460.00 due on the first day of each month. The Agent said the Tenant paid the Landlord a security deposit of \$2,600.00 and no pet damage deposit.

The Agent confirmed that the Landlord had served the Tenant with the Two Month Notice to end the Tenancy for the Landlord's Use. The Agent said that the Landlord and his family want to move back to the residential property, which is why they served the Two Month Notice.

The Two Month Notice was signed and dated January 27, 2021, it has the rental unit address, it was served by attaching it to the door and leaving a copy in the mail box or slot on January 27, 2021. The Two Month Notice has an effective vacancy date of March 31, 2021, and it was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find that the Two Month Notice is consistent with section 52 as to form and content. I find the Agent's testimony in the hearing indicates that the Landlord and his family wish to move back into the residential property for their own use. Accordingly, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the

equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51(1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession for the rental unit to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 26, 2021

Residential Tenancy Branch