



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, OLC, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of the Property: tenant ceases to qualify for rental unit (the “Notice”) issued on January 27, 2021, for an order for the Landlord to comply with the Act, for a monetary order for monetary loss or other money owed, and to recover their filing fee for this application. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”), the Tenant and the Tenant’s translator (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 Matters- Related Issues

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenant's claims for an order for the Landlord to comply with the *Act* and for a monetary order for monetary loss or other money owed.

I will proceed with this hearing on the Tenant's claim to cancel the Two-Month Notice and for the recovery of their filing fee.

Issues to be Decided

- Should the Notice issued on January 27, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of their filing fee for this application?

Background and Evidence

The tenancy agreement recorded that the tenancy began on September 1, 2016, as a month-to-month tenancy. Rent in the amount of \$1,480.00 is to be paid by the first day of each month, and the Landlord collected a security deposit of \$450.00 and at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement and the attached addendum into documentary evidence.

The parties agreed that this rental unit is a subsidized unit, offered to renters through BC Housing and provided to renters that qualify for subsidized housing.

The Landlord testified that on January 8, 2021, BC Housing served them and the Tenant with a letter notifying that the Tenant no longer qualified for subsidized housing. The Landlord submitted a copy of the letter into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on January 27, 2021, by posting the Notice to the front door of the rental unit. The reason for the Notice was checked off as follows:

- *The tenant no longer qualifies for subsidized rental unit.*

The Notice states the Tenant must move out of the rental unit by March 31, 2021. The Notice informed the Tenant of the right to dispute the Notice within fifteen days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they did not agree with the BC Housing assessment that they no longer qualified for subsidized housing.

When asked, the Tenant confirmed that they had not filed for an appeal of the BC Housing decision as of the date of these proceedings.

The Landlord offered a move out date of May 31, 2021, during these proceedings.

Analysis

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

Section 49.1 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: tenant ceases to qualify for rental unit

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

- (a) operated by a public housing body, or on behalf of a public housing body, and*
 - (b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.*
- (2) Subject to section 50 [tenant may end tenancy early] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.*
- (3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is*
 - (a) not earlier than 2 months after the date the notice is received,*
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
 - (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.*
- (4) A notice under this section must comply with section 52.*
- (5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.*
- (6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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.*

I find that the Tenant had personally received the Notice to end the tenancy on January 31, 2021, three days after it had been posted to the front door of the rental unit, pursuant to the deeming provision set out in section 90 of the Act. Consequently, I find that the Tenant had until February 15, 2021, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed their application on February 4, 2021, within the legislated timeline.

I accept the agreed-upon testimony of these parties, supported by the documentary evidence that the Tenant no longer qualifies for a BC Housing subsidy. As this rental unit is a subsidized rental unit and the Tenant no longer qualifies for a subsidy, I find that the Landlord was within their rights to issue this Notice to end the tenancy as the Tenant ceases to qualify for rental unit. Therefore, I dismiss the Tenant's application to cancel the Notice issued January 27, 2021.

Section 55(1) of the Act states:

Order of possession for the landlord

55(1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52

[form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the Act. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on May 31, 2021**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their claim, I find that the Tenant is not entitled to the recovery of their filing fee for this application.

Conclusion

The Tenant's application to cancel the Notice, issued January 27, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on May 31, 2021**. The Tenant must be served with this Order. Should the Tenant 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: May 7, 2021

Residential Tenancy Branch