



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT (Tenant)
 OPL, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution.

The Tenant filed their application February 08, 2021 (the “Tenant’s Application”) and applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 09, 2020 (the “Notice”)
- For more time to dispute the Notice
- To recover the filing fee

The Landlords filed their application February 16, 2021 (the “Landlords’ Application”) and applied as follows:

- For an Order of Possession based on the Notice
- To recover the filing fee

The Tenant appeared at the hearing. The Landlords appeared at the hearing with the Witness who was not involved in the hearing until required. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and Witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

The parties had submitted a letter from the Landlords to the Tenant dated April 29, 2021 withdrawing the Notice. I asked the parties about this at the hearing. The Landlords stated at the outset that they had purchased another home, the Notice is not valid and they want an Order of Possession based on the Notice. I asked the Landlords to confirm that they were seeking an Order of Possession based on the Notice despite acknowledging that it is not valid and despite the letter withdrawing the Notice. The Landlords confirmed they were seeking an Order of Possession based on the Notice. Given this, I proceeded with the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be given more time to dispute the Notice?
2. Should the Notice be cancelled?
3. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession based on the Notice?
4. Is the Tenant entitled to recover the filing fee?
5. Are the Landlords entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement is between the Tenant and a different landlord. The tenancy started May 01, 2014 and was for a fixed term ending April 30, 2015. The tenancy then became a month-to-month tenancy. Rent at the start of the tenancy was \$1,000.00 per month due on the first day of each month.

The parties agreed the written tenancy agreement in evidence is the only written tenancy agreement in this matter and is accurate. The Landlords testified that they became owners of the rental unit on December 10, 2020.

The Notice was submitted. The grounds for the Notice are as follows:

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 purchaser on the Notice is named as Landlord F.D.

The parties agreed the Tenant's previous landlord issued the Notice.

The parties agreed the Notice was served on, and received by, the Tenant December 09, 2020.

The Tenant filed the Tenant's Application late and sought more time to dispute the Notice. I heard the parties on this issue.

The Tenant testified that the Notice was disputed late because she did not know until February that the Landlords planned to renovate the rental unit.

The Landlords testified as follows. They could see the rental unit needed updates when they purchased it. They understood they could update the rental unit before they moved in. The planned renovations were not structural. They thought the Notice was the proper notice to end tenancy to issue. They had contractors attend the rental unit twice. They wanted to replace items such as the furnace. They issued the Notice properly. The Tenant did not dispute the Notice until February. The Tenant disputed the Notice outside of the 15 days permitted. They want the Notice "to stand". They do not agree that the Tenant only found out about their plan to renovate in February as they told the Tenant in December that they needed to do measurements.

The Landlords testified as follows in relation to the grounds for the Notice. They intended to live in the rental unit as their family home. They intended to update the home with minor cosmetic changes and then move into the home. They had this intention up until a week before the hearing. Within the week before the hearing, they purchased a different house. Their plans changed due to the Tenant overholding. They are no longer intending to move into the rental unit. They intend to sell the rental unit. It will be difficult to sell the rental unit with the Tenant living in it.

The Landlords called the Witness who confirmed it was the Landlords' intention to move into the rental unit when they purchased it. The Witness testified about the rental unit

needing updating and the Landlords' intention to do this when they purchased it. The Witness testified about the challenges with selling the rental unit with the Tenant occupying it. The Witness testified that it is always easier to sell a home when it is vacant.

The Tenant testified as follows. They were not aware of the extent of the renovations planned by the Landlords when the Notice was issued which is why they disputed the Notice late. The Landlords planned extensive renovations to the rental unit before moving in and should have issued a Four Month Notice. Tradespeople attended the rental unit in relation to installing windows and doors. The Landlords sought access to the rental unit for an inspection and intended to bring a general contractor with them. They asked to do a house swap with the Landlords because the Landlords were renting prior to the Tenant moving out of the rental unit and the Landlords said no because they were staying in their rental while they renovated the rental unit. They told the Landlords February 03, 2021 that they thought they were given the wrong notice to end tenancy.

The parties submitted a letter to the Tenant from the Landlords dated April 29, 2021 stating that the Landlords wished to withdraw the Notice due to a major change in their circumstances. The letter states that the Landlords no longer intend to occupy the rental unit for their use and want to rescind the Notice. The letter states that the Tenant can remain in the rental unit.

Analysis

The Notice was issued pursuant to section 49(5) of the *Residential Tenancy Act* (the "Act") which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Tenant had 15 days from receiving the Notice on December 09, 2020 to dispute the Notice pursuant to section 49(8)(a) of the *Act*. The Tenant's Application was filed February 08, 2021, past the 15-day time limit.

Section 66(1) of the *Act* states:

66 (1) The director may extend a time limit established by this Act **only in exceptional circumstances**, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review]. (emphasis added)

Policy Guideline 36 deals with extending a timeline and states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The Tenant stated that they disputed the Notice late because they did not know about the renovations planned by the Landlords until February. I do not accept this as the text messages show that the Tenant was made aware of the Landlords' plans as early as December and January (see Screenshot_2021-04-24_at_3_19_48_PM.png, IMG_7283.PNG and IMG_7290.PNG). Given I do not accept the Tenant's stated reason for disputing the Notice late, I do not find that there were exceptional circumstances and do not find a basis to extend the time limit set out in section 49(8)(a) of the *Act*.

Given the Tenant did not dispute the Notice in time section 49(9) of the *Act* applies and the Tenant was conclusively presumed to have accepted that the tenancy ended February 28, 2021, the effective date of the Notice. The Tenant was required to vacate the rental unit by February 28, 2021.

Given I am not extending the time limit for the Tenant's dispute of the Notice, and given section 49(9) of the *Act* applies, I dismiss the Tenant's Application without leave to re-apply. I note that the Tenant is not entitled to recover the filing fee as the Tenant was not successful in the Tenant's Application.

Section 55(1) of the *Act* states:

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.

(emphasis added)

I have reviewed the Notice and find it complies with section 52 of the *Act*. The Notice also complies with section 49(7) of the *Act*.

Given I have dismissed the Tenant's Application and found that the Notice complies with section 52 of the *Act*, I find I must issue the Landlords an Order of Possession based on the Notice. Pursuant to section 55(3) of the *Act*, I issue the Landlords an Order of Possession effective at 1:00 p.m. on May 31, 2021.

I acknowledge that issuing an Order of Possession based on the Notice where the Landlords originally sought to withdraw the Notice and acknowledged that they do not intend to move into the rental unit is an incongruous outcome. However, in my view, the tenancy ended February 28, 2021 by operation of section 49(9) of the *Act* which was prior to the Landlords seeking to withdraw the Notice and prior to the hearing when the Landlords acknowledged that they do not intend to move into the rental unit. Therefore, in these particular circumstances, I find that an Order of Possession must be issued.

During the hearing I asked the Landlords if they were aware of the compensation requirements relating to the Notice given the Landlords statements and testimony about their intentions. The Landlords stated that they were aware of the compensation requirements relating to the Notice. For reference, section 51 of the *Act* sets out the compensation requirements relating to the Notice and states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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....

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Given the Landlords were successful in the Landlords' Application they are entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlords are issued a Monetary Order for \$100.00.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlords are issued an Order of Possession effective at 1:00 p.m. on May 31, 2021. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are issued a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 13, 2021

Residential Tenancy Branch