



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On February 16, 2021, 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*.

The Tenant attended the hearing. F.L. and S.H. attended the hearing as agents for the Landlord. S.H. advised that he was the Landlord's son and he had power of attorney for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord the Notice of Hearing and evidence package by registered mail on February 24, 2021 and F.L. confirmed receipt of this package. However, he stated that there was no evidence included, with the exception of a copy of the Notice. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package. With respect to the Tenant's evidence, I am not satisfied that this was included in the package. As such, this evidence was excluded and it will not be considered when rendering this Decision.

F.L. advised that the Landlord's evidence was served to the Tenant by registered mail approximately a month ago, and the Tenant confirmed receipt of this evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in

accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, this evidence was accepted and considered 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- 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 fee?

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 most current tenancy agreement started on August 1, 2020 and is currently a month-to-month tenancy. Rent was owed in the amount of \$2,184.00 per month and it was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

F.L. advised that the Notice was served to the Tenant by registered on February 10, 2021. The reason the Landlord served the Notice is because "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)." The effective end date of the tenancy was listed on the Notice as April 30, 2021.

S.H. advised that his parents live in South Korea and it was their intention to move into the rental unit last year. However, they were unable to do so when the COVID-19 pandemic started. There was hope that this situation would get better, but as it did not,

the Landlord wanted him to move into the rental unit to take care of it. Thus, the Notice was served. He stated that he sold the property that he owned so that he could move into the rental unit. He stated that he must move out of his property by the end of June 2021.

The Tenant advised that there was originally a verbal agreement that she would be permitted to live in the rental unit for five years. However, she did not have any documented proof of any such agreement in writing. She stated that she had been informed multiple times by the Landlord that the Landlord might want to sell the rental unit, and she expressed her interest in purchasing it.

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 where the Landlord or a close family member of the Landlord intends in good faith to occupy 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.

When reviewing the totality of the evidence before me, I find it important to note that the consistent and undisputed evidence is that the most current tenancy agreement was a month to month tenancy agreement. There is no evidence before me that there was any agreement for a fixed length of time that is still ongoing. Furthermore, the Landlord's son has provided solemnly affirmed testimony advising that he will be occupying the rental unit once vacant. I do not find that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice. As such, I am satisfied that the Landlord's son intends to use the rental unit for the stated purpose. Consequently, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on February 10, 2021 complies with the requirements set out in Section 52, I uphold the Notice, I dismiss the Tenant's Application, and I find that the Landlord is entitled to an Order of Possession that is effective **at 1:00 PM on May 31, 2021 after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Both parties were reminded of the one-month compensation requirement that is associated with serving this Notice. As well, both parties were reminded of the 12-month

compensation requirement should the Landlord not use the property for the stated purpose.

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

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **at 1:00 PM on May 31, 2021 after service of this Order** on the Tenant. 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 20, 2021

Residential Tenancy Branch