



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT / OPL, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for landlord’s use of the rental unit pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- cancellation of the landlord’s Two Month Notice to End Tenancy for Landlord’s Use of Property (the “**Notice**”) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. The tenant was represented by counsel (“**BP**”) and an articulated student (“**GW**”). The landlord was represented by two counsel (“**LMB**” and “**BM**”). All were given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

Neither party raised any issue relating to service of documents. Some of the tenant’s documents, which were provided to the landlord in advance of the hearing, failed to upload properly to the Residential Tenancy Branch (the “**RTB**”) online evidence portal. During the hearing, I gave the tenant leave to reupload these documents and have reviewed them prior to drafting this decision.

Preliminary Issue – Jurisdiction

The parties entered into an agreement whereby the landlord agreed to rent the rental unit to the tenant and agreed to provide the tenant with an option to purchase the rental unit. A single document dated October 5, 2020 and titled “Residential Lease Agreement with Option to Purchase” was entered into evidence. The landlord argued that this document contained two separate agreements (a residential tenancy agreement and an option to purchase agreement) and the tenant argued it was a single agreement and the option to purchase was intertwined with tenancy.

The tenant argued that, as a single agreement, the RTB did not have jurisdiction to hear this matter, as the issue of determining whether the option clause was exercised is outside the scope of the Act. The landlord argued that issues related to the option clause could be bifurcated from issues relating to the tenancy agreement, and the issues relating to the tenancy agreement (specifically, the validity of the Notice) could be adjudicated by the RTB.

Prior to the hearing, the parties provided written submissions on the issue of bifurcation.

However, shortly before this matter came to a hearing, a complicating factor was introduced. On April 27, 2021, the tenant filed a Notice of Family Claim in the Supreme Court of BC, naming the landlord as a respondent. In it, she alleges that the landlord is her spouse.

At the outset of the hearing, the landlord's counsel conceded that, as a result of this filing, I would not be able to issue an order of possession, as the issue of whether the tenant has an ownership interest in the rental unit has now been called into question.

Despite this, the landlord's counsel requested that I make factual determinations relating to the validity of the Notice but stop short of making any orders relating to the end of the tenancy.

The tenant's counsel opposed such an analysis, arguing it would not be an efficient manner to resolve the dispute, in light of the parties' dispute before the BC Supreme Court (the "**Family Claim**").

The entirety of the hearing was spent on submissions relating to jurisdiction (both the issue of bifurcation and whether the fact that the landlord no longer seeks an order of possession obviates a need for a hearing on the validity of the notice). At the end of the hearing, I advised the parties that, in the event I find that the RTB has jurisdiction to hear this matter, I would issue an interim decision setting out my reasons for accepting jurisdiction, and would reconvene these applications to hear submissions as to their merits.

However, for the reasons that follow, I find that it is not necessary to adjudicate either application, as the issues raised in each are moot. Accordingly, this decision is a final decision, and neither application will be reconvened.

In order to determine if the RTB has jurisdiction to hear these applications, I must consider the statutory provisions under which each of the applications has been brought.

Section 49 of the Act, in part, states:

(3) 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.

[...]

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

Section 55 of the Act, in part, 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.

[...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

The landlord's application is one for an order of possession, per section 55(2) of the Act. The landlord now takes the position that I am unable to award such relief. As such, any determination of fact I would make would be in service of an application that could not possibly succeed. I do not find that this would be an efficient use of the dispute resolution process. The landlord's application is moot, and I do not find it appropriate to expend RTB resources to engaging in what would effectively be an academic exercise.

The tenant's application, while engaging the same issues as the landlord's, is framed slightly differently. Rather than opposing the order of possession, the tenant's application disputes the validity of the Notice. This involves a slightly different analysis from the landlord's application. Rather than determine if an order of possession is warranted (something the parties agree I cannot issue), I must determine if the landlord issued the Notice in compliance with section 49(3) of the Act. On its surface, such an analysis would not seem to be prevented by the landlord's position that an order of possession cannot be awarded.

However, in substance, the tenant's application is no different from the landlord's. For the landlord's application, in order to determine if an order of possession is warranted, I must first determine if the Notice is valid, just as I would have to determine when assessing the tenant's application. For the tenant's application, if I were to find that the Notice is valid, section 55(1) of the Act requires that I issue an order of possession (this

is not discretionary). Additionally, per Rule of Procedure 6.6, the landlord bears the burden of proof in both applications.

As such, if I were to adjudicate the tenant's application, and were I to find that the Notice is valid, I would be required by the Act to grant an order of possession that the landlord agrees I am unable to grant. As such, any analysis relating to the validity of the Notice would be moot. To conduct such an analysis would not be an efficient use of RTB resources.

There is no reason for me to conduct any analysis of the Notice or any other aspect of either application, as, no matter the result of such analysis, the practical outcome would be the same: the tenant would remain in the rental unit. I decline to conduct an analysis solely for the purpose of providing essentially declaratory relief, as such declarations would not have any impact of these applications and may serve to bind the decision-maker in the Family Claim. It is not appropriate for the parties to litigate portions of the Family Claim in the RTB.

Accordingly, I decline to adjudicate either of the applications, as the outcome of either is a foregone conclusion and do not require any order from the RTB to occur: the tenant will remain in the rental unit. The disputes contained therein are not, at this point in time, able to be adjudicated before the RTB. Depending on the outcome of the Family Claim, this may change. As such, it is not appropriate for me to cancel the Notice. I explicitly make no finding as to its validity.

I make no orders regarding the return of one or either of the filing fees.

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: June 10, 2021

Residential Tenancy Branch