



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPB
For the tenants: CNR, MNDCT, OLC, FFT

Introduction

The landlord filed an Application for Dispute Resolution on April 1, 2021 seeking an order of possession in line with the tenancy agreement.

The tenant filed an Application for Dispute Resolution on June 4, 2021 seeking a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). Additionally, they applied for compensation for monetary loss, the landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a participatory hearing because the tenant’s Direct Request application cannot be considered by that method when there is a cross-application by the landlord in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 20, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

Each party stated they delivered notice of this dispute via registered mail to the other. This included packages of evidence they each prepared in advance for this hearing. On this basis, I proceeded with the hearing on its scheduled date and time.

The landlord provided a copy of the tenancy agreement jointly signed by the parties on July 4 and 7, 2019. This sets the fixed term of the tenancy at 2 years, to expire on June 30, 2021. The agreement specifies that the tenancy will end on that specific date, and the tenant must

vacate the rental unit. Both parties initialled the provided space to indicate they reviewed that clause.

Regarding the end of this tenancy, the landlord issued the 10-Day Notice to the tenant on May 28, 2021 via registered mail. This was for past rent amounts owing as per a 2020 repayment plan that was in place. This gave the move-out date of June 6, 2021.

In the hearing, the tenant provided that they are moving out from the rental unit on July 31, 2021. They stated they have a secured new tenancy agreement at a different rental unit for August 1, 2021. Concerning the 10-Day Notice and its validity, both parties had the opportunity to speak to that issue.

Given that the tenant provided affirmed testimony that they will be moving out on Jul 31, 2021, the validity of the 10-Day Notice is not in issue. The landlord indicated they were aware of this final date of the tenancy. For this reason, I dismiss the tenant's Application to cancel the 10-Day Notice.

Similarly, the landlord's Application for an Order of Possession based on the specific fixed-term clause within the tenancy agreement is also dismissed.

At the outset, I advised both parties of the immediate issue concerning the end of the tenancy. By Rule 6.2 of the *Residential Tenancy Branch Rules of Procedure*, I do not consider the tenant's application for monetary compensation, nor do I consider their request for the landlord's compliance with the *Act*, the regulations, and/or the tenancy agreement. By Rule 2.3, I find these issues are unrelated and I amend the tenant's Application to exclude these matters. The tenant is at liberty to file a new and separate application to address the other issues.

Because the tenant was not successful in their Application and did not withdraw despite their ending tenancy, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

The tenant's Application to cancel the Two-Month Notice is dismissed without leave to reapply. I issue the Order of Possession to be used by the landlord only if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on July 31, 2021. The landlord must serve the tenant this order if needed. Should the tenant fail to comply with the Order of Possession, the landlord may file and enforce it as an Order of the Supreme Court of British

Columbia. Because the tenancy is ending the landlord's compliance with the legislation and/or the tenancy agreement is no longer at issue; therefore, this piece of the tenant's Application is likewise dismissed without leave to reapply.

The separate issue of monetary compensation is dismissed *with* leave to reapply. While I have provided leave to reapply, it does not extend to any applicable time limits under the *Act* and I made no legal findings on the merits of the dispute.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 20, 2021

Residential Tenancy Branch