



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), pursuant to section 49; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant SB (the tenant), landlord RL and counsel GP attended the hearing. Tenant SB represented tenant NB. Counsel GP (the landlord) represented respondents RL and RW. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Service

The tenant affirmed she served both respondents with the application and the evidence (the materials) by registered mail on April 21, 2021 (the tracking number is recorded on the cover page of this decision).

The landlord confirmed receipt of the package addressed to RL and that he is aware that another package was mailed to RW.

Based on the testimony offered by both parties and the tracking number, I find the applicants served the respondents in accordance with section 89(1)(c) of the Act.

The landlord stated he did not serve the response evidence submitted to the Residential Tenancy Branch.

Rule of Procedure 3.15 states:

[...]

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord's response evidence is excluded, per Rule of Procedure 3.15.

I note that section 55(1) 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 is compliant with the Act.

Preliminary Issue – Jurisdiction

Section 2 of the Act provides:

What this Act applies to

(1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The Constitution Act, 1867 specifies the legislative authorities of the federal and provincial governments. Canada has exclusive legislative jurisdiction under section 91(24) with respect to "Indians and Lands reserved for Indians".

Residential Tenancy Branch Policy Guideline 27 states:

Homes or rental units located on "lands reserved for Indians" as defined by section 91(24) of the Constitution Act ("Reserve Lands"), will fall under Federal legislative

power. The Courts have held that provincial legislation cannot apply to the right of possession on Reserve Lands.

The landlord affirmed the rental unit is not on lands reserved for Indians.

The tenant stated the rental unit is not on lands reserved for Indians, but the entire American continent is Indian land.

Based on the testimony offered by both parties, I find the rental unit is not on lands reserved for Indians and I have jurisdiction to render a decision in this matter, per section 2 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. cancellation of the Notice?
2. an authorization to recover the filing fee?
3. If the tenants' application is dismissed, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on October 01, 2010. Monthly rent is \$1,275.50, due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 was collected and the landlords hold it in trust.

The landlord affirmed the Notice was attached to the tenant's door on March 28, 2021 at noon. The tenant testified she received the Notice on March 28 or 29, 2021. This application was filed on April 11, 2021.

A copy of the Notice was provided. The Notice is dated March 26, 2021 and the effective date is May 31, 2021. The reason to end the tenancy is: "all 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”.

Counsel PB stated RL sold the rental unit on March 23, 2021 to RW and that the sale is unconditional. Counsel PB confirmed RL received the purchaser’s notice to the seller for vacant possession (submitted into evidence) on March 26, 2021. Counsel PB said the purchaser intends to occupy the rental unit, as he needs to be closer to facilities and to live in a smaller residence. Counsel PB affirmed the purchaser sold his previous residence and has been renting until he can occupy the rental unit.

The tenant testified she is a member of the Moorish American Nation, the Moorish people own the land and have the right to live in the rental unit. The tenant submitted into evidence a Moorish passport indicating she is a member of the Moorish American Nation.

Analysis

Section 49(8)(a) also allows the tenant to dispute the Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the Notice by March 29, 2021 and the tenant submitted this application on April 11, 2021, I find the tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid.

Section 49(5) of the Act allows a landlord to end a tenancy if the purchaser intends to occupy the rental unit:

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;

Residential Tenancy Branch Policy Guideline 2A states the landlord must demonstrate that he plans to occupy the rental unit for at least 6 months and that he has no ulterior motive for issuing the Notice.

Residential Tenancy Branch Policy Guideline 2A states:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Based on the landlord's detailed, convincing and undisputed testimony, and the purchaser's notice to the seller for vacant possession, I find the landlords have met the onus to prove, on a balance of probabilities, that they sold the rental unit, the conditions on which the sale depends have been satisfied, the purchaser asked the landlord, in writing, to serve the Notice, the purchaser intends, in good faith, to occupy the rental unit for at least 6 months and there is no ulterior motive for issuing the Notice. The Notice is confirmed and I find the tenancy ended on May 31, 2021.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlords are entitled to an order of possession effective two days after service on the tenants.

I warn the tenants that they may be liable for any costs the landlords incur to enforce the order of possession.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant an order of possession to the landlords effective two days after service of this order. Should the tenants 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: August 16, 2021

Residential Tenancy Branch