



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KBK No. 108 VENTURES LTD. C/O CANDOU MANAGMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 09, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use dated July 27, 2021 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenants appeared at the hearing. The Agent for the Landlord appeared at the hearing (the “Agent”). 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 provided affirmed testimony.

The Agent provided the correct name of the Landlord which is reflected in the style of cause.

The Tenants advised that their request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same issue as the dispute of the Notice and therefore I have not considered this separate claim.

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

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

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The agreement started August 01, 2021 and is for a fixed term ending July 31, 2022. Rent is \$1,800.00 per month due on the first day of each month. The Tenants paid a \$900.00 security deposit. The written agreement was signed by the Tenants June 31, 2021. The written agreement was not signed for the Landlord.

The Tenants testified that the written tenancy agreement is accurate.

The Agent noted that the tenancy between the parties started in 2019. The Agent confirmed that the written tenancy agreement outlined above does represent the agreement between the parties. The Agent confirmed that the Landlord drafted the written tenancy agreement and sent it to the Tenants to sign, which the Tenants did. The Agent confirmed that the terms outlined in the written tenancy agreement are the terms the parties agreed to.

The Notice was submitted. The purpose of the Notice is for the Landlord to demolish the rental unit. The Notice has an effective date of November 30, 2021.

The Agent testified that the Notice was sent to the Tenants by email and courier on July 28, 2021. The Tenants testified that they received the Notice July 28, 2021 by email.

The Tenants confirmed that the only basis for their dispute of the Notice is that the Landlord is trying to end the tenancy prior to the end of the fixed term. The Tenants confirmed they are not disputing the grounds for the Notice.

The Agent took the position that the tenancy should not be considered a fixed term tenancy because of a verbal agreement the parties reached in 2019 about the rental being a short term rental and the Landlord's plans for demolition and redevelopment. The Agent testified that the Tenants knew the rental unit was only available until demolition which would be in two years time.

I asked the Agent why the Landlord agreed to a fixed term tenancy if they planned to demolish the rental unit. The Agent testified that the property management company expected the rental unit to be available until they received notice from the owner. The Agent testified that the City has asked that the rental unit be demolished before the end of September and the Tenants must vacate before July 31, 2022 for the Landlord to meet the City's deadline.

The Tenants testified that the parties did not come to a verbal agreement in 2019 as described by the Agent. The Tenants testified that they were told the property would be redeveloped but they were not given a date for this.

I have reviewed all of the documentary evidence submitted.

Analysis

The Notice was issued pursuant to section 49(6)(a) of the *Act* which states:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit...

Section 49(2)(b) of the *Act* states:

(2) Subject to section 51...a landlord may end a tenancy

(b) for a purpose referred to in **subsection (6)** by giving notice to end the tenancy **effective on a date that must be**

- (i) not earlier than 4 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.**

(emphasis added)

I find the tenancy is a fixed term tenancy until July 31, 2022. I do not accept that conversations or verbal agreements made in 2019 change the written term the parties agreed to two years later, in 2021. If in 2021 the Landlord wished to end the tenancy at any time pursuant to a Four Month Notice, the Landlord should not have entered into a fixed term tenancy ending July 31, 2022. The written tenancy agreement starting August 01, 2021 for a fixed term ending July 31, 2022 is clear, there is no ambiguity in the term. The parties agreed to enter into a fixed term tenancy ending July 31, 2022 and the Landlord cannot now unilaterally change the agreement or term. Nor has the Landlord provided a valid basis for not enforcing the term.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, **the effective date is deemed to be the earliest date that complies with the section...**(emphasis added)

The effective date on the Notice is November 30, 2021, prior to the end of the fixed term, and therefore does not comply with section 49(2)(b)(iii) of the *Act*. Pursuant to section 53 of the *Act*, the effective date is changed to July 31, 2022.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 49(7) of the *Act*.

The Tenants did not dispute that the Landlord had grounds to issue the Notice, the only issue raised by the Tenants was the effective date of the Notice. Given the Tenants did not dispute that the Landlord had grounds to issue the Notice, I uphold the Notice and issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order of Possession is effective July 31, 2022 at 1:00 p.m. I note that I told the parties that an Order of Possession would be issued for July 31, 2022 at 1:00 p.m. during the hearing and the Tenants did not raise an issue with this.

Given the Tenants were successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. The Tenants are issued a Monetary Order for \$100.00.

Conclusion

The Landlord is issued an Order of Possession effective July 31, 2022 at 1:00 p.m. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Tenants are issued a Monetary Order in the amount of \$100.00. This Order must be served on the Landlord and, if the Landlord 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: December 14, 2021

Residential Tenancy Branch