



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

The landlord made two Applications for Dispute Resolution seeking an Order of Possession indicating he had a mutual agreement to end tenancy with the tenants. The first application was set for hearing on January 11, 2022 to hear the matter for the lower suite of the house occupied by the tenant referred to by initials LC. The second application was set hearing on January 13, 2022 to hear the matter for the upper suite of the house occupied by the tenant referred to by initials KC. The landlord stated that LC and KC are mother and daughter occupying the upper and lower suite of the same house.

At the hearing of January 11, 2022 only the landlord appeared. There was no appearance by LC or anybody on behalf of LC. I was presented a registered mail receipt, including tracking number, and an image of the registered mail envelope as evidence the hearing materials were sent to LC on September 15, 2021 and returned to sender as unclaimed. Under section 90 of the Act, a person is deemed to be in receipt of documents five days after mailing. I deemed LC served under section 90 and I continued to hear from the landlord without the tenant present.

In reviewing the materials submitted by the landlord, it appeared as though the landlord had entered into a co-tenancy agreement with LC and KC on February 28, 2021 and that this was the document the landlord was relying upon in taking the position he had a mutual agreement to end tenancy for both rental units. The landlord stated he erred in preparing what looks like a co-tenancy agreement since the rental units are separate and the tenancies had been considered separate tenancies up until this document was prepared.

Considering the tenancy agreement points to a co-tenancy for the whole house and neither tenant was in attendance at the January 11, 2022 hearing, out of an abundance

of caution and fairness for the tenants, I ordered the January 11, 2022 hearing be held over until the January 13, 2022 hearing slot scheduled for KC in the event the tenant(s) were going to appear for the later hearing date. I ordered the two applications be joined and set to be heard together on January 13, 2022, as provided under Rule 2.10 of the Rules of Procedure

Rule 2.10 of the Rules of Procedure provides:

2.10 Joining applications

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

In the event the parties entered into a co-tenancy agreement, I was of the view the applications should be joined. In the event there was not a co-tenancy, I was still of the view it was appropriate to join the two applications as the applications related to the same residential property managed and owned by the same landlord and the landlord was seeking the same remedy under both of the applications. Therefore, I was satisfied I would be hearing similar evidence and making similar findings of fact.

At the hearing of January 13, 2022, the landlord appeared but there was no appearance by either tenant, or anybody on behalf of the tenants.

I proceeded to explore service of hearing materials upon KC. The landlord submitted a registered mail receipt, including tracking number, and the returned registered mail envelope as proof the hearing materials were sent to KC at the rental unit on September 15, 2021 but that they were not picked up and returned as unclaimed. I deemed KC sufficiently served under section 90 of the Act and I continued to hear from the landlord without the tenants present.

During the hearing, the landlord withdrew his request to recover the filing fee and I have amended the applications accordingly.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that tenant LC has occupied the lower suite for over 30 years and her tenancy started under a former landlord. In 2007 the current landlord purchased the property, inheriting LC as a tenant. After purchasing the property, the upper suite was occupied by other tenants until 2010 when KC became the tenant of the upper suite.

The landlord described the rental units as being separate self contained suites in the same house but creation of the two suites was non-confirming.

In November 2020 the landlord issued a *Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit* to each of the tenants as the landlord intended to do a major renovation of the property. I heard that the tenants did not dispute the 4 Month Notice or vacate the property. The landlord's plans also changed and he then intended to move into the house so the landlord did not enforce the 4 Month Notice. The landlord approached the tenants to give them more time (6 months) to find alternative accommodation before he moved in and on February 28, 2021 the parties executed the tenancy agreement that is before me.

The tenancy agreement before me indicates a six month fixed term tenancy set to commence on March 1, 2021 and expire on August 31, 2021 at which time the tenants would have to vacate the property so that the owner could occupy the property, under section 13.1 of the Residential Tenancy Regulation.

The landlord testified that the tenants did not vacate the property by August 31, 2021 and on September 1, 2021 the landlord filed the applications that are before me.

The landlord also submitted that on September 4, 2021 he issued a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") to each of the tenants indicating he was seeking to end the tenancy so that he may occupy the rental unit. The landlord completed a Proof of Service for the 2 Month Notices indicating they were given to LC, in person, on September 4, 2021 in the presence of a witness and acknowledgement of receiving the 2 Month Notices was signed by LC. The landlord submitted this is a common method of serving both of the tenants and the landlord considered giving KC's 2 Month Notice to LC as being service upon an adult who apparently resides with the tenant. The tenants did not dispute the 2 Month Notices.

The landlord confirmed to me that he will be occupying the rental unit after the tenancy, or tenancies, end and he regains possession of the rental units for at least six months.

The landlord testified that he understands LC is moving out tomorrow based on what LC's social workers have told him. The landlord still seeks an Order of Possession in the event that does not happen.

The landlord testified that KC continues to occupy the rental unit and he understands she is having a difficult time finding alternative accommodation due to having numerous pets.

The landlord stated that he has given LC compensation equivalent to two months of free rent and given credit to KC equivalent to one month of free rent. The landlord considers the rent to be sufficiently paid up to and including the month of January 2022 and the landlord seeks Orders of Possession effective January 31, 2022.

Documentary evidence provided to me includes a copy of the tenancy agreement executed on February 28, 2021; the 2 Month Notices dated September 4, 2021; Proof of Service for the 2 Month Notices; along with the registered mail receipts and envelopes.

Analysis

I have been provided unopposed evidence that the parties executed a six month fixed term tenancy agreement, set to expire on August 31, 2021, requiring the tenants to vacate the house, or both rental units, so that the landlord may occupy the house. I have also been provided unopposed evidence that the landlord also served the tenants with 2 Month Notices on September 4, 2021 so that the landlord may occupy the rental units.

Section 55(2) of the Act provides for the circumstances where a landlord may request an Order of Possession, which I have reproduced below:

(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;
- (b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1)the tenancy agreement is a sublease agreement;
- (d)the landlord and tenant have agreed in writing that the tenancy is ended.

[My emphasis underlined]

The tenancy agreement before me was duly executed by all parties and provides that upon the expiry of the fixed term (August 31, 2021) the tenants would have to vacate the residential property so that the landlord may occupy the property. Section 97(2)(a.1) provides:

97 (1)The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2)Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a)exempting tenancy agreements, rental units or residential property from all or part of this Act;

(a.1)prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term;

Section 13.1 of the Residential Tenancy Regulations provides that

Fixed term tenancy — circumstances when tenant must vacate at end of term

13.1 (1)In this section, "close family member" has the same meaning as in section 49 (1) of the Act.

(2)For the purposes of section 97 (2) (a.1) of the Act [prescribing circumstances when landlord may include term requiring tenant to vacate], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a)the landlord is an individual, and

(b)that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

[My emphasis underlined]

Upon review of the tenancy agreement signed by all parties, and having the landlord confirmed that he has and still intends to occupy the house after the tenancy ends, and the issuance of a 2 Month Notice, while unnecessary to issue, is consistent with ending the tenancy so that the landlord may occupy the rental units, I find it am satisfied that the tenancies are ended to that the landlord for his own use.

The expiry date of the fixed term has lapsed. Even if the tenants relied upon the 2 Month Notices served on September 4, 2021, the tenants did not dispute the 2 Month Notices and the effective date of those 2 Month Notices (which would be November 30, 2021) have since lapsed. Further, I heard the tenants have been given compensation by the landlord that is equal to or more than that which accompanies a 2 Month Notice (one month free rent). As such, I find there to be no prejudice to the tenants in finding the tenancy to an end due to the fixed term tenancy agreement or the 2 Month Notices.

In light of all of the above, I provide the landlord with Orders of Possession for each of the tenants and their respective rental units, to be effective January 31, 2022, as requested.

Conclusion

The landlord is provided Orders of Possession effective January 31, 2022 to serve and enforce upon the tenants.

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: January 13, 2022

Residential Tenancy Branch