



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:30 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 10:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

This matter convened on January 27, 2022 and continued for 35 minutes. During that time, the tenants advised that they were not provided with the landlord's evidence. The evidence was sent to an incorrect address. As the tenants did not have access to the landlord's evidence, and were unable to respond to that evidence, the hearing was adjourned to provide the tenants with an opportunity to review and respond to the landlord's evidence. The hearing reconvened on February 18, 2022.

The landlord testified that he served the tenant with his evidence via registered mail on January 28, 2022. The landlord provided two Canada Post tracking numbers confirming this mailing to the tenant and one to the tenant's husband. The tracking numbers are reproduced on the cover of this decision. I find that the tenant was deemed served with this evidence on February 2, 2022, five (5) days after the landlord mailed it, in accordance with sections 88 and 90 of the *Act*.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing.

I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If the tenants fail in their application, is the landlord entitled to:

- 1) an order of possession pursuant to s. 49?

Preliminary Issue-Application Dismissed

The tenant did not attend the hearing. I therefore refer to Rules 7.1 and 7.3 which provide as follows:

Rule 7- During the Hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to re-apply. [emphasis added]

Further, Rule 7.4 states:

Rule 7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As provided above, the tenant did not attend the hearing. Pursuant to Rule 7.4 I was unable to consider any evidence they submitted. In view of the above, I dismiss the tenants' application in whole, without leave to reapply.

I note s. 55 of the Act requires that when a tenant applies 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, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Background and Evidence

The landlord testified that the tenant's sub-tenants remain on the property. The landlord stated that his son and his son's girlfriend plan to move into the house once the required repairs are complete. The tenant converted the inside of the residence into what the landlord describes as a "dormitory", contrary to municipal bylaws. Prior to his son taking possession of the residence, the landlord must comply with the orders issued by the municipality – removing walls and reconfiguring the home into a single-family dwelling as well as installing smoke detectors etc. Once the renovations are completed, his son and his girlfriend will move into the home.

Analysis

Section 49(3) of the *Act* allows a landlord to end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends, in good faith to occupy the rental unit. The landlord provided affirmed testimony that his son and girlfriend will move into the residence upon ensuring the residence conforms to the municipal order.

I now turn my mind to the form and content of the Two-Month Notice. I find the Two-Month Notice complies with the requirements for form and content pursuant to s. 52 of the *Act*. The effective date of the Two Month Notice was November 1, 2021. I therefore find that the tenants are overholding the rental unit and the landlord is therefore entitled to an Order of Possession pursuant to s. 55(1) of the *Act*.

I explained the requirements of s. 51 to the landlord. Specifically, if the landlord fails to use the rental unit as stated on the Two Month Notice, then pursuant to s. 51 of the *Act*, the landlord may be subject to paying the tenants the equivalent of twelve (12) months' rent as a penalty.

Conclusion

The tenant's application is dismissed in totality, without leave to reapply.

Pursuant to s. 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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 *Residential Tenancy Act*.

Dated: February 22, 2022