Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #110045302: OPL, OPC, FFL
File #910054241: CNL, MNDCT, FFT

Introduction

The Landlord applies for an order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the "*Act*") after issuing a Two-Month Notice to End Tenancy dated October 26, 2021 (the "Two-Month Notice"). The Landlord also seeks the return of their filing fee pursuant to s. 72 of the *Act*.

This matter was originally heard on December 10, 2021, after which point the Landlord obtained an order for possession on December 11, 2021. On December 29, 2021, the original decision and the order for possession was suspended after the Tenant's review application was granted.

J.H. and R.P. appeared as agents for the Landlord. K.D. appeared on his own behalf as Tenant. T.E. appeared as witness for the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

As stated in the review considerations, the Tenant was to serve the Notice of Dispute Resolution for the review hearing on the Landlord within three days of receiving it from the Residential Tenancy Branch. The Tenant was unable to demonstrate when, or if, he did serve the Notice of Dispute Resolution for the review hearing stating that he attended the Landlord's office on December 31, 2021, though this appears to be in relation to the service of documents from the BC Supreme Court. The Landlord's agents

acknowledged that the Landlord had received the Notice of Dispute Resolution directly from the Residential Tenancy Branch on January 11, 2022. Despite the Tenant's obligations to serve the Notice of Dispute Resolution as stated in the review decision, I am satisfied that the Landlord was sufficiently served with the Notice of Dispute Resolution pursuant to s. 71(2) of the *Act*.

The review decision also directed that the Landlord re-serve their original application materials. The Landlord's agents indicate that the Landlord re-served the Tenant with their application materials by sending it via registered mail, posting it to the Tenant's door, and placing a copy in their mail slot on January 11, 2022. The Tenant denies receiving the Landlord's application materials at all. I do not believe the Tenant's denial and accept the Landlord's affirmed evidence that their application materials were served by three separate means on January 11, 2022. I note that s. 89(2) permits the Landlord to post the materials to the Tenant's door given it is their application for an order for possession. I find that the Landlord's application materials were served in accordance with s. 89 of the *Act* by having it posted to the Tenant's door on January 11, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application materials on January 14, 2022.

The Tenant indicates that he served the Landlord with his responding evidence by personally attending the Landlord's office on January 24 and 26, 2022. The Landlord denies receiving documents on January 24, 2022 and acknowledges the documents received on January 26, 2022. Rule 3.15 of the Rules of Procedure indicates that an application respondent must serve their evidence at least seven days before the scheduled hearing. I find that the Tenant failed to serve their evidence within the time limits imposed by the Rules of Procedure. I further find that to include evidence served 2 or 4 days before the hearing would be prejudicial to the Landlord. The Tenant's evidence is not included as part of this hearing.

Preliminary Issue – Joining applications

The Tenant's review application was successful on the basis that he had filed an application to dispute the Two-Month Notice. The Tenant's application also has a claim for monetary compensation and return of the Tenant's filing fee.

Rule 2.10 of the Rules of Procedure permits applications before the Residential Tenancy Branch to be joined and heard at the same time to ensure a fair, efficient, and

consistent process. In considering whether to join application, the following criteria are considered:

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.

The Tenant's application is set for hearing on March 1, 2022. The Landlord seeks to have the Tenant's application joined with this matter such that the aspects of the Two-Month Notice can be determined at the same hearing. The Landlord advised that the residential property has been sold and the sale is closing on February 10, 2022. The Landlord further advised that the original closing date of January 10, 2022 had to be extended as a result of this present dispute with the Tenant. The Tenant does not wish for the applications to be joined.

I find that joining the Tenant's application to cancel the Two-Month Notice with the Landlord's application for an order for possession would ensure a fair, efficient, and consistent process. The arbitrator in both applications would have to consider the same facts and make similar findings. Further, to hear the matters separately would be prejudicial to the Tenant as the outcome to the Landlord's application may foreclose consideration of the Tenant's claim to cancel the Two-Month Notice. Waiting to have both matters heard on March 1, 2022 would be prejudicial to the Landlord given the impending closing date and the previous extension for closing the sale of the house. Accordingly, I join both applications such that the Tenant's claim to cancel the Two-Month Notice and the Landlord's present application are heard at the same time.

The Tenant's claim for monetary compensation and for return of their filing fee shall proceed as scheduled on March 1, 2022.

Issue(s) to be Decided

1) Should the Two-Month Notice be cancelled?
2) If not, is the Landlord entitled to an order for possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that Tenant moved into the rental unit on August 1, 2007, that rent of $2,098.00 is due on the first day of each month, and that the Landlord holds a security deposit $800.00 in trust for the Tenant. A copy of the written tenancy agreement was put into evidence by the Landlord.

The Landlord advised that they initiated their application in August 2021 after issuing a One-Month Notice to End Tenancy. However, between their application and the hearing of December 10, 2021, the property owner sold the residential property, which resulted in the Two-Month Notice being issued. After issuing the Two-Month Notice, the Landlord amended their application on November 12, 2022 to include that they sought an order for possession after issuing a Two-Month Notice. The Landlord says that the Tenant was served with the amendment on November 12, 2021 after it was posted to the Tenant's door and placed in his mail slot.

The Landlord advised that the Tenant was personally served with the Two-Month Notice on October 26, 2021. The Two-Month Notice lists both that the Landlord would occupy the rental unit and that the rental unit was sold and the buyer wished for to occupy the unit. The buyer, Q.Z., requested that the Landlord give the Tenant notice to vacate the rental unit by sending the Landlord a written request dated October 21, 2021.

The Landlord says that on November 4, 2021 the Tenant advised them that he would not be leaving the rental unit on December 31, 2021, which is the effective date set out in the Two-Month Notice. The Landlord put into evidence a letter dated on November 4, 2021 from T.M., an employee of the Landlord, detailing her conversation with the Tenant on that date.

The Landlord's agents advised that the original closing date for the sale was set for January 10, 2022, which was extended to February 10, 2022. The Landlord submitted an amendment to the purchase contract dated January 1, 2022 which details the extension.

The Landlord indicates that they had no knowledge of the Tenant's application to dispute the Two-Month Notice until December 16, 2021. It was on that date that the Landlord attended the residential property to serve the Tenant with the order for possession and were then handed the Tenant's application.

The Landlord emphasized that the Tenant's Notice of Dispute Resolution set out that the date the Tenant's application was made was December 13, 2021. The Tenant argues that his application to dispute the Two-Month Notice was delayed by processing times at the Residential Tenancy Branch.

The Tenant admitted that the property has been sold. The Tenant argued that he spoke with the prospective buyers when they came to view the residential property. He indicated that all the prospective buyers wanted to purchase the property for investment purposes. The Tenant was not specific on whether the individual who did purchase the property told him this. The Tenant also argued that he believed that the purchaser, Q.Z., was merely a front for the Landlord property manager who had, in fact, purchased the property. The Tenant indicated that he needed more time to prove this theory. The Landlord denied purchasing the property.

The Tenant also said that the house was registered with BC Housing, which prevented its being used by the new owner for their personal use. The Landlord denied this and indicated that the property owner is an 82-year-old individual who has decided to sell.

The Tenant indicated that he was promised by the property owner that he would be given 6 months to move out of the rental unit, though that is not listed in the tenancy agreement.

The Landlord argues that the Tenant is acting in an obstructive manner. They say the Tenant has not assisted in facilitating the sale and provide a letter from the realtor dated November 5, 2021. The realtor's letter says that the Tenant would not allow access to the inside of the rental unit. The realtor says that the owner decided to list the property "as is, where is" without any viewings of the house or photographs of the interior due to the Tenant's conduct. The letter concludes that the property owner needs vacant possession to close the sale and fulfill on his contractual obligations to the buyer and that the Tenant is jeopardizing the sale.

The Tenant indicated that he has special need adult children and that they are susceptible to COVID, which is why he did not wish for buyers to enter the rental unit.

Analysis

The Tenant applies to cancel the Two-Month Notice. The Landlord applies for an order for possession after issuing the Two-Month Notice.

A landlord may end a tenancy pursuant to s. 49(5) of the *Act* if the landlord enters into an agreement in good faith to sell the rental unit, the conditions for sale have been satisfied, and the purchaser asks the landlord, in writing, to give the tenant a notice to end tenancy. A notice given under s. 49(5) must not list an effective date that is earlier than 2 months after the tenant receives the notice. If a tenant files to dispute the notice, they must do so within 15 days of receiving the notice.

The Tenant under the present circumstances started his application on November 8, 2021. Pursuant to Rule 2.6 of the Rules of Procedure, an application is deemed to have been made when a complete application is received by the Residential Tenancy Branch and the application fee is paid.

Review of the Tenant's application and notes from the Residential Tenancy Branch on his file show that there was a critical error in the Tenant's application which prevented it from being processed.

The Residential Tenancy Branch attempted to reach the Tenant on November 15, 2021 and November 22, 2021 to address the critical error in the Tenant's application, leaving voicemails on both occasions. It was not until December 10, 2021, which was the same day as the original hearing for the Landlord's application, that the Tenant chose to contact the Residential Tenancy Branch to address the error in his application. The Tenant advised Residential Tenancy Branch staff on December 10, 2021 that he would attend a Service BC office the following Monday, which was December 13, 2021, to address the issues in his application. The Notice of Dispute Resolution for the Tenant's application was generated on December 14, 2021.

I highlight the Residential Tenancy Branch records because the Tenant's application could not be processed when it was initially made due to the Tenant's error. The Tenant argued during the hearing that his application could not be processed due to processing delays with the Residential Tenancy Branch. That is incorrect. The Residential Tenancy Branch attempted to contact the Tenant on two occasions to correct his application so that it could be processed. The Tenant did not respond to these requests. The Tenant only reached out to the Residential Tenancy Branch on December 10, 2021 and then

further only addressed the deficiency in his application on December 13, 2021 when he attended the Service BC office.

I find that the Tenant's application was made on December 13, 2021, which is when the Tenant's corrected application was received by the Residential Tenancy Branch. I find that the Tenant's original application of November 8, 2021 could not be processed due to a critical error, namely that the Tenant did not list what specific claim the he was making.

The Tenant did not apply for more time to dispute the notice under s. 66 of the *Act*, this despite filing his corrected application on December 13, 2021. Further, the Tenant did not ask that I grant him more time to dispute the notice under s. 66 at the hearing.

Pursuant to s. 49(8)(a), the Tenant had 15-days after receiving it to dispute the notice by filing an application with the Residential Tenancy Branch. Indeed, the top of the notice indicates the following:

> **HOW TO DISPUTE THIS NOTICE**
>
> You have the right to dispute this Notice **within 15 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Here, the Tenant failed to dispute the notice in the timeframe set out under the *Act*. Given this, s. 49(9) is engaged and I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on December 31, 2021 and ought to have vacated the rental unit by that date

Further, in the event that I am incorrect in my conclusion that the Tenant is conclusively presumed to have accepted the end of the tenancy pursuant to s. 49(9), I would have found in the Landlord's favour. I am satisfied on the Landlord's evidence that the Two-Month Notice was issued in good faith.

The Tenant admits that the property was sold, though argues that it was not sold in good faith. The Tenant alleges that the Landlord used Q.Z. as a front to purchase the house. The Tenant essentially argues that the Landlord is perpetuating a fraud, which

would require clear evidence. The Tenant provides no such evidence. I find the Tenant's theory that the Landlord property manager purchased the property using Q.Z. as a front is highly unlikely, particularly in the face of the evidence provided by the Landlord.

The Landlord has submitted sale documents showing Q.Z. as the buyer and that Q.Z. asked the Landlord to issue the Two-Month Notice on the basis that they intended to occupy the rental unit. I accept that the Two-Month Notice was issued in good faith based on the written request from the purchaser and the fact that the sale's closing has been renegotiated due to the Tenant's continued occupation of the rental unit. I find that the rental unit was listed for sale in good faith by the Landlord, that the sale conditions have been satisfied, and that the buyer intends, in good faith, to occupy the rental unit.

Accordingly, I would dismiss the Tenant's application to cancel the Two-Month Notice in any event. The Landlord has satisfied me that they are entitled to an order for possession and they shall receive that order.

Conclusion

The Tenant's application to cancel the Two-Month Notice was made on December 13, 2021 and the Tenant did not seek more time to dispute it as per s. 66 of the *Act*. The Tenant is conclusively presumed to have accepted the end of the tenancy. I would have found that the Landlord issued the Two-Month Notice in good faith in any event.

The Landlord is entitled to an order for possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

As the Landlord was successful in their application, they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenant pay the Landlord's fee. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain $100.00 from the security deposit they hold in trust from the Tenant in full satisfaction of their filing fee.

It is the Landlord's obligation to serve the order for possession on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with 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 2, 2022

Residential Tenancy Branch