



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession, further to having served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent of \$42,000.00 dated February 24, 2020 ("10 Day Notice"); for an order of possession, further to having served a Two Month Notice to End Tenancy for Landlord's Use dated October 29, 2020 ("Two Month Notice"); for an order of possession for unpaid rent; and to recover the \$100.00 cost of the Application filing fee.

The Tenants, V.S. and O.S., the Landlords, S.G. and C.G., a witness for the Landlords, P.D. ("Witness"), and counsel for the Landlord, F.T. ("Counsel"), all appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, Counsel said that the Landlord object to the Tenants relying on an appraisal, because that was not received by the Landlord in service of documents. I advised the Parties to let me know if the other Party introduced any documents that the first Party had not received in service. No one so advised me in the hearing, and I have not reviewed the appraisal, as I find it was not served pursuant to the Act and Rules.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and confirmed this in the hearing. The Tenants provided their email address in the hearing. The Parties confirmed their understanding that the Decision would be emailed to both Parties, and any Orders would be emailed to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Tenants were five minutes late to the hearing and initially interrupted everyone else who spoke. However, they settled down after I issued a caution in this regard. The Tenant said he did not understand all the “legal talk” of the Landlord’s Counsel, although Counsel did not go into any complicated legal arguments that someone would be able to understand. Further, I had to interrupt Counsel, because the Tenant kept talking to his wife while Counsel was speaking. Perhaps if the Tenant had listened to more of Counsel’s submissions, he might have understood him better. In addition, the Tenant referred to his own lawyer at times, so there was the option of having his lawyer attend, if the Tenant did not understand the proceedings.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 3, 2018, with a rent of \$21,000.00 pre-paid quarterly. The Parties agreed that the Tenants did not pay the Landlord a security or a pet damage deposit for this tenancy.

The Landlord submitted copies of two eviction notices she said she served to the Tenants. The first was the 10 Day Notice, which was signed and dated February 24, 2020, it has the rental unit address, it was served via registered mail on February 24, 2020, with an effective vacancy date of March 10, 2020, and it was served on the grounds that the Tenants failed to pay \$42,000.00 when it was due on February 1, 2020.

The second eviction notice was the Two Month Notice, which was signed and dated October 29, 2020. The Two Month Notice has the rental unit address, it was served via registered mail on October 29, 2020, with an effective vacancy date of February 1, 2021, and it was served on the grounds that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Landlords said that in this case, their daughter is going to move into the residential property.

Counsel explained this rental situation, as follows:

The agreement that governs the Parties is a tenancy agreement with an option to purchase. That document is Exhibit B to [the Landlord's] witness statement. It is a nine-page agreement that [the Tenants'] counsel drafted and both Parties signed. That agreement has two components, including an option to purchase.

The agreement captures the rental obligation and provides for their occupancy, and provides for an option to purchase. This agreement was entered into on November 14, 2018, and it expired on July 1, 2019. It has not been renewed in the manner contemplated, so what is left as a month-to-month tenancy. It is a tenancy because the option to purchase has lapsed. There is no mechanism in the agreement by which ownership could be transferred. There never really was, because the [Tenants] have not satisfied the requirements of the agreement, because the option to purchase expired December 1, 2018, and was not exercised.

The concern about jurisdiction is unfounded, because those elements of the agreement have long since lapsed and fallen away.

The Tenant asked to which agreement the Agent was referring. She said that it is the agreement contained in Exhibit B at page seven of the Landlord's primary submission. Counsel said:

On last page of it, it appears that it was not executed by the Tenant until November 14, but nothing turns on it. The standard terms in Exhibit H are carried forward in clauses 9 & 10 of Exhibit B – rental obligations are carried forward.

These clauses state the following:

Rent

9. Subject to the provisions of this Lease, the rent for the Property is \$7,000.00 per month (the "Rent").
10. The Tenant will pay the Rent on or before Every 3 months prepaid. The rent for August 1st, September 1st, and October 1st and November 1st has been paid. Next payment of \$21,000 is for December 1st; January 1st, and February 1st, 2019.

The Tenant responded:

I did not sign this agreement. Why are we here? The Exhibit is fake – I never signed this agreement, there are no dates below the signatures. There is evidence from my lawyer asking me in November 2018 - you have it in front of you - to sign it. Emails from his lawyer and his financial representative, asking me to sign the same agreement.

You have in front of you with a Two Month Notice with our signature, an email of my lawyer and [J.L.], asking us to sign this agreement in November 2018 – in the Tenants' evidence on page 20.

They were asking for our signatures, but we never put the date on the tenancy agreement that the Landlord has. He used this for making the Two Month Notice and this is a fake and a fraud and it is under investigation.

It's only a verbal agreement I only signed the second agreement for [the Landlord] to get his money back at the bank. I did a favour for [him]; it's not a tenancy agreement. Nothing to do with the tenancy.

I looked at the Tenants' evidence, but the Two Month Notice was not contained anywhere in their submissions. However, the Tenants submitted a document at page 40 of their submissions that has his signature. However, I am not a handwriting expert, therefore, I cannot determine whether the Tenant's signature on the tenancy agreement is real or not. I infer from the Tenant's comments that the police are investigating this matter.

However, I note that in his testimony, the Tenant implied that he had signed the tenancy agreement for the Landlord, to do him "a favour". I find the Tenant's evidence to be internally inconsistent, in that he denied having signed the tenancy agreement, but he also stated that he "...only signed the second agreement for [the Landlord]".

Counsel then asked the Landlord a series of questions, as follows:

Look at the agreement in Exhibit B to your witness statement. Look at the last page of that agreement. That's your signature there?

Yes, it is.

Is that the [Tenant's] signature?

Yes.

Who drafted it?

[R.C.].

And this is the agreement that came to you signed?

Yes

And it requires them to pay rent?

Yes, it does

At paragraph 16 of that agreement on page three of that agreement, the Tenant is responsible for payment of utilities. Did they ever pay them?

No.

Paragraph 24 on page four, reads:

Additional Clause

24. The tenant must pay a non-refundable deposit of \$200,000 by December 1st, 2018. This monies will be applied to the purchase of the property. The completion date will be no later than July 1st, 2019. The rent will be prepaid 3 months at a time \$21,000. The term will be for 1 year. If the rent is paid as agreed and monies are paid to the Landlord. The tenant can pay the estimated \$1.3 million (plus all costs incurred to purchase the property) to the Owner/Landlord anytime and also pay out the [B.S.] Mortgage at any time

Did they pay that?

No. No part of it

Paragraphs 40 and 41 describe an option to purchase. Paragraph 42 reads:

42. This Option may only be exercised at any time up to December 1st, 2018. Upon expiration of the Option, the Landlord will be released from all obligations to sell the Property to the Tenant. If the Tenant does not exercise the Option prior to its expiration, all rents and other charges paid under this Lease will be retained by the Landlord, the Option Deposit will be returned to the Tenant, and neither Party will have any further rights or claims against each other concerning the Option. In the event the Option is exercised, the Option Deposit will be credited against the Purchase Price.

Did they pay this?

No, they didn't pay.

Did they pay the estimated purchase price of \$2.6 million?

No, they have not paid this amount

As set out in paragraph 40 of the agreement, that estimated purchase price is made up of estimated costs of \$1.3 million, plus all closing costs (legal, property taxes, insurance), and all fees to the Landlords, and an assumption of a mortgage. Have they paid either?

No.

Paragraphs seven and 13 of that agreement on page two set out the Term of the lease. Paragraph seven states that it commences at 12:00 noon on August 1, 2018, and ends at 12:00 noon on July 1, 2019. Paragraph 13 state that upon giving written notice "no later than 60 days before the expiration of the term of this Lease, the Tenant may renew this Lease for an additional term. All terms of the renewed lease will be the same except for this renewal clause.

Did the Tenants give notice to renew the lease?

No, not ever done.

Were there further discussions in 2020 or 2021 about purchasing?

Quite a few times we met, but he never came up with the money.

You've never reached an agreement with him to buy the property?

No.

In Exhibit J to [the Tenants'] statement dated April 1, 2021. [The Tenant] says that he and you had a meeting on about April 1, 2021.

Yes, we did.

Can you tell me what this document is?

Him wanting to purchase the property. I wanted to sell it back to him, but he never comes up with the money.

Not on these terms?

We never reached an agreement

You issued a Two Month Notice: Exhibit L to your statement. Is that the Two Month Notice?

Yes, it is. We sent it via registered mail.

Turning to Exhibit M, what are these documents?

The receipts of post office of all the registered mail we sent [the Tenant], including the Two Month Notice.

Why did you issue the Two Month Notice?

Because my daughter recently divorced and needs a place to stay for as long as she want there.

That was in 2021. Does she still currently intend to move in?

Does she intend to move in? Yes, she does, and she can stay as long as she wants.

The Tenant responded:

One comment. The agreement drafted by my lawyer is a complete lie. It's drafted by his lawyer. Nothing else. Because it's not in a court. They just keeps going on and on like a court. When we're going to Supreme Court with them, but just want to talk about fraudulent signatures. My lawyers never drafted this agreement. His lawyer drafted it to get his \$40,000.00, but I only signed it because . . . We had a verbal agreement. He knows it and I know. It has nothing to do with the tenancy.

I don't understand what we're talking about now; if we have no tenancy agreement in place, and no other agreement that I signed, and he's lying right now in front of you that I can prove easily. I didn't know that he was going to pick on that. What I've tried to do to buy my property back . . . it was submitted to this lawyer, if you didn't read it. It's all there. No problem to take time. It's completely bizarre and he's lying.

Counsel said:

To mention in closing, [the Tenant] appears to be taking the position that he did not execute or agree to Exhibit B, but if not, he has no right to an option to purchase. He has no agreement oral or otherwise to purchase the property. If B wasn't executed by [the Tenant], therefore, no jurisdiction doesn't make sense.

He hasn't paid rent since October 2020. It is a contextual factor. The principle issue here is that a Two Month Notice was issued - there's no dispute about that, or that it was served and received by [the Tenant]. If we look at documents Exhibit L and M to [the Tenant's] witness statement, the Two Month Notice was delivered on October 30, 2020. [The Tenants] did not file a dispute resolution in response to that notice. Therefore, this matter can be disposed of by way of section 49 (9), which provides that if a tenant who has received a Two Month Notice does not apply for dispute resolution, then the tenant is conclusively presumed to have accepted that the tenancy ends.

They did not vacate, and on that basis and with reference to section 55 (2) of the Act, the Landlord is entitled to an order of possession. Even if that failure to file is rectified, that I don't think it can be. There is still no dispute about the legitimacy of the Two Month Notice. There is Intent with his daughter to move in.

No evidence was led, and there is no dispute of good faith of those intentions. She will occupy the property for more than a year. Even if the failure to apply for dispute resolution is somehow cured, the balance of the evidence indicates that the Landlord are entitled to end the tenancy pursuant to 49 (3) of the Act, because [their daughter] intends to move in

Concerns about jurisdiction arise in the context of Policy Guideline #27, but there is no transfer of ownership. It is not about the transfer of ownership. At the base level, it appears to be [the Tenant's] position that there is no agreement to tenancy, and no option to purchase. What remains is an implied contract that this

they are paying until October 2020, and their occupancy can be ended pursuant to the Act. Alternatively, if the contract in Exhibit B governs – the option to purchase has lapsed and is no longer applicable

The Landlord said: The option to purchase was not exercised before December 1, 2018, when it lapsed – it has fallen away. Even prior to that date, it was not open to the Tenants to purchase the property, because they failed to pay a deposit required in section 24. Also, it can only be exercised if it is in compliance with the lease. They failed to pay rent and failed to pay utilities any time. They were noncompliant with sections 41 – 42 of the tenancy agreement by not exercising the option to purchase; they did not do that.

What remains of section 42 of the tenancy agreement is that the option can only be exercised up to December 1, 2018. If the Tenant does not exercise this option, all rent will be retained by the Landlord. Neither Party has any further rights or claims concerning this option. In my submission, that's what's happened. The option was not exercised, so it has fallen away. What's left is the tenancy agreement, subject to the Act, and which can be ended pursuant to section 49 (3), which the evidence indicates has happened. There is no jurisdictional issue. It is a tenancy agreement that remains between the parties.

In summary, a Two Month Notice was served, delivered, not disputed and the evidence led today established that the requisite elements – close family member intends to move in - has been establish. The concerns about previous arbitrations about jurisdiction are unfounded. because any options have long since lapsed.

On that basis, the Landlord is entitled to an order of possession forthwith. The Tenants have occupied this property for years, and have not made any rental payment since September 2020, and only partial payments up to that point. It is imperative that the [Landlord] be permitted to draw some use of the property they are registered owner of and permit their daughter to move in.

The Tenant said:

One comment, I found interesting. He is legal counsel, going over legality and terminology, he knows I'm not going to understand. I need to get my lawyer involved

and have some decent arguments against his comments.

Counsel then introduced the Landlord's Witness, who identified herself as the daughter of the Landlord, C.G. The questions and answers are as follows:

Have you had any discussions about you moving in to the property?

Yes

In 2020?

Yes

What were the outcomes?

Once the Tenants moved out, I would move in.

You intended to in . . .

December 2021, or early January.

Why?

I am recently divorced and needed a place to live.

For how long?

Quite some time, over a year.

Do you still intend to move in?

Yes.

How long do you plan to live there?

Over a year.

The Tenant declined the opportunity to ask questions of this Witness.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In terms of jurisdiction, Policy Guideline #27 states:

2. TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;
- there was a right to purchase in a tenancy agreement and whether it was exercised.

Based on the evidence before me in this matter, I find that there was a tenancy agreement between the Parties that contained an option to purchase the residential property. I found that the Tenant provided internally inconsistent evidence as to whether he signed it or not, and as such, I find that his testimony in this regard is unreliable. I find the Landlord to have more credibility regarding the validity of the tenancy agreement.

I note that the option to purchase in the tenancy agreement expired, and I find that upon the expiration of this option, that the agreement became solely a tenancy agreement between the Parties. I, therefore, find that I have jurisdiction to hear this matter.

Section 49 (3) of the Act states that, "A landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." I find that the Landlord is an individual, and that his daughter intends in good faith to occupy the rental unit.

I find that the Landlord served the Tenant with a Two Month Notice and that it is consistent with section 52 of the Act, as to form and content.

Section 49 (9) of the Act states that if a tenant who has received a Two Month Notice does not apply for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenants disputed the Two Month Notice, I find that they are conclusively presumed under section 49 (9) of the Act to have accepted the Two Month Notice, and I find that the tenancy, therefore, ended on February 1, 2021. As a result, I find that the Tenants are overholding the rental unit and

the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act. As the effective date of the Two Month Notice has passed and the Parties agreed that the rent for February 2022 has not been paid, the **Order of Possession** will therefore be **effective two days after service** on the Tenants.

I also find that the Landlord is entitled to recovery of the **\$100.00** filing fee pursuant to section 72 of the Act, which she may recover by way of the attached **Monetary Order**, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in their Application for an Order of Possession, pursuant to having served the Two Month Notice. The Tenants failed to dispute the Two Month Notice; therefore, they are conclusively presumed by the Act to have accepted that the tenancy ended on the effective vacancy date of February 1, 2021.

Pursuant to section 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 Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

Pursuant to section 72 of the Act, I grant the Landlord a **Monetary Order** of **\$100.00**. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Dated: March 02, 2022

Residential Tenancy Branch