



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, CNL-MT, RR, RP

Introduction

On January 6, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Act*, seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking a repair Order pursuant to Section 32 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 15-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation. She advised that the Tenant's full legal name was noted on the tenancy agreement. As such, the style of cause on the first page of this Decision has been amended accordingly.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:15 AM. Only the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of

Hearing. As the Tenant has not attended this hearing, the Tenant's Application is dismissed in its entirety.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application 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 if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Four Months' Notice to End Tenancy For Demolition or Conversion cancelled?
- Is the Tenant entitled to have the Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- Is the Tenant entitled to more time to cancel the Notice?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the most current tenancy started on August 15, 2020 for a fixed term of one year, and that the tenancy was now currently month-to-month. She submitted that rent was established at \$3,300.00 per month and that it was due on the first day of each month. A security deposit of \$1,650.00 and a pet damage deposit of \$250.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that she had never served the Tenant with a Four Months' Notice to End Tenancy For Demolition or Conversion. She advised that she served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by hand on December 8, 2021, and this is consistent with what the Tenant noted in her Application. The reason the Landlord served the Notice is because "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 effective end date of the tenancy on the Notice was noted as April 30, 2022.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence is that the Notice was served to the Tenant by hand on December 8, 2021. According to Section 49(8) of the *Act*, the Tenant had 15 days to dispute this Notice, and Section 49(9) of the *Act* states that "*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.*"

After being served the Notice, the fifteenth day fell on Saturday December 23, 2021 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by that date. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first page of the Notice.

Ultimately, as the Tenant was never served a Four Months' Notice to End Tenancy For Demolition or Conversion, this request was not considered. Furthermore, the undisputed evidence is that the Tenant did not dispute the Two Month Notice to End Tenancy for Landlord's Use of Property within the required timeframe, that she did not submit any documentary evidence corroborating that she had any extenuating circumstances that prevented her from disputing the Notice on time, and that she did not attend the hearing to make submissions with respect to why she needed more time to dispute the Notice. Given this, I am satisfied that the Tenant has been conclusively presumed to have accepted the Notice.

With respect to the Notice served to the Tenant on December 8, 2021, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. While the Landlord did not include the dispute address in the lower portion of the Notice, I can reasonably infer that the Tenant knew that the address listed as her address for service was the same as the dispute address. As such, I find it reasonable under these circumstances to amend the Notice to correct this error, in accordance with Section 68 of the *Act*. Consequently, I find that this Notice meets all of the requirements of Section 52 of the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, as the Tenant has not complied with the *Act*, as the Tenant has not attended the hearing, and as the Tenant's Application has been dismissed in its entirety, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. As such, I grant the Landlord an Order of Possession effective on **April 30, 2022 at 1:00 PM after service of this Order** on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective on **April 30, 2022 at 1:00 PM after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 5, 2022

Residential Tenancy Branch