



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE, CNL, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlords ("the landlord") attended and the hearing began at the scheduled time. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The hearing process was explained, and the landlord was given an opportunity to answer questions.

Preliminary Issue – Late Submission of Evidence

Sixteen minutes after the hearing started and shortly before the hearing was about to end, the tenant called into the hearing.

Before the tenant joined the hearing, the landlord acknowledged they did not provide a copy of the Two Month Notice.

Rule 3.19 of the Rules of Procedure provides the Arbitrator may direct that evidence be submitted after the hearing starts.

The landlord requested to submit the Notice after the start of the hearing.

The landlord testified as follows. The Notice was in the standard RTB form. The Notice was served on January 24, 2022, by posting to the door of the unit. The Notice indicated an effective move-out date of March 31, 2022. The reason for the issuance of the Notice is stated to be the mother or father of the landlord would occupy the unit.

The tenant applied to cancel the Notice and her application is the subject of this hearing.

I considered the landlord's testimony regarding service, the contents of the Notice, the application by the tenant to cancel the Notice, and the failure at that time of the tenant to attend the hearing.

Pursuant to the provision of Rule 3.19, I allowed the landlord to submit a copy of the Notice. They submitted a copy during the hearing.

When the tenant joined the hearing, I explained what had previously taken place. The tenant raised no objections to the late submission of the Notice.

Preliminary Issue – Attendance of Tenant

As stated earlier, sixteen minutes after the hearing started and shortly before the hearing was about to end, the tenant called into the hearing. The landlord had completed providing their evidence. The tenant explained she had difficulty calling in.

The tenant was then affirmed and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The hearing process was explained, and the tenant was given an opportunity to answer questions.

The Arbitrator provided the tenant with a summary of what took place at the hearing before she attended. The tenant stated she wanted the Two Month Notice cancelled and the tenancy to continue.

At 9:54 AM, 24 minutes after the start of the hearing, the tenant disconnected from the hearing without notice. The tenant rejoined the hearing two minutes later. During the time the tenant was not on the call, the landlord and I did not speak. When she rejoined, the tenant said she was inexplicably suddenly cut off.

During the time the tenant attended the hearing, she spoke for most of the time in an increasingly agitated and upset manner.

I explained several times to the tenant about the severance of all issues and that I was not considering any issue except the continuation of the tenancy.

Nevertheless, the tenant repeatedly spoke about her grievances with the landlord and the dismissed claims which were unrelated to the issue of the Two Month Notice. The tenant asked the same questions many times.

I explained several times about the possible outcomes of the hearing.

Preliminary Issue – Service of Application for Dispute Resolution and Notice of Hearing

The landlord confirmed receipt of the tenant's Application for Dispute Resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In

accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Preliminary Issue – Service of Two Month Notice

The landlord testified they posted the Two Month Notice to the door of the unit on January 24, 2022, thereby effecting service under section 90 three days later, that is, on January 27, 2022.

The tenant confirmed receipt of the landlord's Two Month Notice and acknowledged that the Notice was posted to the door of the unit on January 24, 2022. I reviewed the particulars of the late-submitted Notice with the tenant, and she acknowledged receipt of a copy of the Notice.

In accordance with sections 88 and 90 of the *Act*, I find the tenant was served with the Two Month Notice three days after posting, that is, on January 27, 2022.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spend considerable time discussing possible settlement. They appeared to reach an agreement two times. However, the tenant changed her mind each time.

The tenant became increasingly upset during the hearing. She made allegations about the landlord and their behavior. She repeatedly accused the landlord of deceiving her by falsely assuring her that she could live in the unit for many years. Although the only matter under consideration was whether the tenancy would continue, the tenant repeatedly made claims about unrelated matters, such as the belief the landlord came into the unit without permission. The tenant appeared angry and distraught. The hearing took considerably longer as a result.

After discussion, the tenant confirmed that she wanted to proceed with the hearing and for me to decide, rather than agree to a settlement with the landlord. The tenant was given ample time to make this decision. I gave the tenant an opportunity to speak privately with a friend and placed the hearing on hold while she did so. During that 2-minute period, the landlord and I waited on the call and did not speak.

I answered all the tenant's questions regarding the settlement and hearing procedures. The tenant was cautioned about the possible outcomes of my decision repeatedly and chose to pursue a hearing of this matter.

Preliminary Issue – Severance

After looking at the list of issues before me, I determined that the most pressing and related issues before me deal with whether the tenancy continued.

Section 2.3 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As a result, I exercised my discretion to dismiss, with leave to reapply, the remainder of the tenant's claims other than their application to cancel the Two Month Notice and reimbursement of the filing fee.

I explained my decision to the parties who had an opportunity to ask questions.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

Section 55 states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Preliminary Issue – Dismissal of the Tenant's Application for Dispute Resolution

A tenant has 15 days after service of the Two Month Notice to file an Application for Dispute Resolution.

As stated earlier, I have found that the effective date of service was January 27, 2022. The tenant filed their Application for Dispute Resolution on February 12, 2022, which is outside the 15-day period.

The Notice states as follows, emphasis added:

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.**

This is based on the section 49 of the Act which states:

(8) A tenant may dispute a notice under this section by applying for arbitration within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not apply for arbitration in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

As the tenant did not file the Application for Dispute Resolution within the time allowed, I dismiss the tenant's application to cancel the Notice and for reimbursement of the filing fee without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The hearing, scheduled for 1-hour, lasted 75 minutes. Considerable conflicting testimony was submitted. I do not refer to all the evidence in my Decision. Only admissible, relevant evidence is referenced that is material to the issues, my findings and my Decision.

Background of Tenancy

The landlord testified as follows. They are spouses and live with one of the spouse's mother and father. Their residence has two floors. The unit is the apartment in the lower level of the house and is on one floor.

The parties agreed the tenancy began November 1, 2019, and monthly rent is \$800.00. No security deposit was paid.

As stated earlier, the parties agreed Two Month Notice was served on January 24, 2022, by posting to the door of the unit. The Notice indicated an effective move-out date of March 31, 2022. The reason for the issuance of the Notice is stated to be that the mother or father of the landlord or the landlord's spouse intended to occupy the unit. The tenant acknowledged receipt and I have found that the tenant was served three days after posting, that is, on January 27, 2022. The tenant filed an application to dispute the Notice. I have dismissed the tenant's application.

The landlord testified as follows. They live with the female landlord's elderly mother and father. Their living area is divided into two floors. The mother and father have difficulty climbing the stairs. The landlord wants them to move into the unit which is situated on one floor.

The tenant claimed the landlord's parents were not moving into the unit.

Analysis

While I have turned my mind to the admissible documentary evidence and the testimony, not all details are reproduced here. The relevant and important aspects of the landlord's claims for an Order of Possession and my findings are set out below.

The landlord submitted credible testimony which I accept in all aspects.

I find, as acknowledged by the parties, that the tenancy began November 1, 2019, and monthly rent is \$800.00.

I find, again as acknowledged by the parties that the landlord issued a Two Month Notice which I find complied with section 52

I find the tenant was served three days after posting of the Notice, that is, on January 27, 2022. The tenant filed an application to dispute the Notice. I have dismissed the tenant's application without leave to reapply.

Pursuant to section 55(1), the director **must** grant to the landlord an Order of Possession of the rental unit if the landlord's Notice complies with section 52 and the tenant's application is dismissed.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- a. the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- b. the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's Two Month Notice complies with section 52 of the *Act*.

I have dismissed the tenant's application to cancel the landlord's Two Month Notice without leave to reapply.

I find that this tenancy ended pursuant to the Notice on the effective date of March 31, 2022. As the tenant is still in possession of the unit, I find the landlord is entitled to an Order of Possession.

Neither party raised any issues regarding outstanding rent, so I find that the tenant is entitled to possession of the rental unit until the end of the month. I therefore grant the Order of Possession effective May 31, 2022, at 1:00 PM.

Conclusion

The tenant's application to cancel the Two Month Notice and for reimbursement of the filing fee is dismissed without leave to reapply.

I grant the landlord an Order of Possession effective May 31, 2022, at 1:00 PM.

This Order of Possession must be served on the tenant. The Order may be filed and enforced in the Courts of the Province of BC.

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: May 20, 2022

Residential Tenancy Branch