



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, FFT

Introduction

On March 20, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with B.M. attending as an advocate for the Tenant. The Landlord attended the hearing, with S.H. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance, except for S.H., provided a solemn affirmation.

Service of documents was discussed, and S.H. advised that the Landlord was prepared to proceed, despite the Tenant making contradictory submissions with respect to service of the Notice of Hearing and evidence packages. All evidence submitted was accepted and considered when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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 Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

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.

All parties agreed that the tenancy started on February 1, 2021 between the Tenant and the Landlord's ex-husband; however, she became the Landlord at the end of April 2021. The tenancy agreement was for a fixed length of time until January 30, 2022. Rent was established at \$3,750.00 per month and was due on the first day of each month. A security deposit of \$1,875.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

The parties also agreed that the Notice was served by hand to the Tenant on March 15, 2022. The Landlord did not check off a reason for service of the Notice; however, S.H. referenced an accompanying document entitled *Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession*, which should have made it clear to the Tenant that the rental unit was sold, and that the purchaser wanted to occupy the rental unit. The effective end date of the tenancy was noted as May 31, 2022 on the Notice.

The Tenant advised that she understood that this was the reason for service of the Notice. B.M. advised that it was the Tenant's understanding that the original landlord promised verbally that she could stay long term after the fixed term tenancy had ended. He referenced documentary evidence to support this position. He submitted that the

Tenant met with the Landlord, sometime after April 2021, where the Landlord agreed to extend the tenancy; however, the Landlord never brought back an amended tenancy agreement, or a new tenancy agreement. There is no written proof of any agreement to extend the tenancy; however, it is the Tenant's belief that the Landlord should honour this verbal agreement.

The Landlord confirmed that she met with the Tenant at the end of April 2021 and that she would think about the Tenant's request for an extension to the tenancy; however, she did not agree to anything verbally or in writing.

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 being sold to a party where the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit. Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate 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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Despite the Landlord not checking off a reason on the Notice, as the Tenant acknowledged that she understood why the Notice was served, I am satisfied that the Notice meets all of the requirements of Section 52.

When reviewing the totality of the evidence before me, the undisputed evidence is that all of the conditions for the sale of the rental unit have been satisfied and that the purchaser asked the Landlord in writing to give this Notice. While it is the Tenant's position that the Landlord should not be able to serve this Notice as there was some sort of agreement extending the tenancy, I find that there is no written agreement provided demonstrating that the tenancy was extended at any point. Therefore, I am satisfied that the tenancy was a month-to-month tenancy at the time the Notice was served.

Given that a purchaser is within their right to occupy a rental unit provided that certain requirements of the *Act* are fulfilled, as I am satisfied that these requirements were met, I find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 p.m. on May 31, 2022**. The Landlord will be given a formal Order of Possession which must be served on the Tenant.

As the Tenant was not successful in this Application, I do not find that the Tenant is entitled to recover the filing fee on her Application.

Conclusion

I dismiss the Tenant's Application in full. The Landlord is provided with a formal copy of an Order of Possession effective at **1:00 p.m. on May 31, 2022**. Should the Tenant or any occupant on the premises 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: May 24, 2022

Residential Tenancy Branch