



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to two applications for dispute resolution filed by the Tenant on April 26, 2022, and July 20, 2022.

In their first application, the Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property issued in April 2022 by Landlord K.S. (the "April Notice"). The Tenant also sought to recover the filing fee.

In their second application, the Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property issued in July 2022 by Landlord R.B. (the "July Notice"). The Tenant also sought to recover the filing fee.

The Tenant appeared at the hearing. The Landlords appeared at the hearing. Landlord K.S. appeared with H.S. to assist. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Landlord K.S. was the previous landlord in this matter. The rental unit has been sold to Landlord R.B. who is the current owner and landlord in this matter. It was agreed at the hearing that the April Notice can be cancelled and Landlord R.B. is seeking an Order of Possession on the July Notice.

H.S., on behalf of Landlord K.S., acknowledged receipt of the hearing package and evidence for the Tenant's first application.

Landlord R.B. acknowledged receipt of the hearing package and evidence for the Tenant's second application.

The Tenant acknowledged receipt of evidence from both Landlords.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. In this decision, I will only refer to the evidence I find relevant.

Issues to be Decided

1. Is the Tenant entitled to recover the filing fee for their first application?
2. Should the July Notice be cancelled?
3. If the July Notice is not cancelled, is Landlord R.B. entitled to an Order of Possession?
4. Is the Tenant entitled to recover the filing fee for their second application?

Background and Evidence

A written tenancy agreement between the Tenant and Landlord K.S. was submitted, and the parties agreed it is accurate. The parties agreed the tenancy agreement has simply carried on through the purchase of the rental unit by Landlord R.B. Rent in the agreement is \$900.00 per month due on the first day of each month.

The July Notice was submitted. The Tenant did not take issue with the form or content of the July Notice when asked. The grounds for the July Notice are that the rental unit will be occupied by Landlord R.B.

Landlord R.B. testified that the July Notice was posted on the Tenant's door July 06, 2022; however, the Tenant was out of town until July 10, 2022. The Tenant acknowledged receiving the July Notice on July 10, 2022, posted on their door.

Landlord R.B. testified as follows. They issued the July Notice so that they can move into the rental unit. They have no choice but to move into the rental unit. The purchase of the rental unit was their first time purchasing a home. They are currently living with their parents. Their parents have said they need to move out. They are currently losing money due to the Tenant remaining in the rental unit.

Landlord R.B. submitted the following relevant documentary evidence. Text messages from Landlord R.B. to the Tenant about intending to move into the rental unit and currently living at their parents' house. A letter dated April 11, 2022, from Landlord R.B. to the seller of the rental unit asking that the Tenant be issued a notice to end tenancy as Landlord R.B. intends to move into the rental unit, which is their first home purchase, as they have nowhere else to stay after July 01, 2022. Signed letters from two separate individuals stating Landlord R.B. asked them for help to move Landlord R.B.'s belongings into the rental unit. A signed letter from Landlord R.B.'s parents stating Landlord R.B. is currently living with them and they want Landlord R.B. to move into the house Landlord R.B. purchased. A signed letter from Landlord R.B. outlining the reasons they want to move into the rental unit including that they cannot afford to pay the mortgage for the rental unit as well as rent at another location and therefore need to live in the rental unit. In their letter, Landlord R.B. acknowledges that the Tenant does not believe Landlord R.B. will move in due to the condition of the rental unit. Landlord R.B. states that they intend to move into the rental unit and slowly fix it up over time.

Landlord R.B. sought an Order of Possession for the effective date on the July Notice.

The Tenant disputed that Landlord R.B. intends to move into the rental unit and relied on the condition of the rental unit which the Tenant says is in an extreme state of disrepair. The Tenant referred to a list of repairs required in the rental unit that they submitted. The Tenant testified that Landlord R.B. did not take a good look through the rental unit when Landlord R.B. came to see it before purchasing it. The Tenant testified that the neighbouring house has "squatters" who have filled the backyard with garbage and therefore the Tenant does not believe Landlord R.B. wants to live in this location. The Tenant testified that the rental unit is half a duplex and the other half was sold, renovated and re-rented, which the Tenant believes will also happen with the rental unit.

The Tenant submitted a list of required repairs to the rental unit authored by the Tenant as well as photos of the rental unit.

Analysis

July Notice

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) 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.

The good faith requirement is explained in RTB Policy Guideline 2A at pages one to two.

The Tenant had 15 days from receiving the July Notice to dispute it pursuant to section 49(8)(a) of the *Act*. Based on the testimony of the parties, I find the Tenant received the July Notice on July 10, 2022. The Tenant's second application was filed July 20, 2022, within time.

Pursuant to rule 6.6 of the Rules, Landlord R.B. has the onus to prove the grounds for the Notice. Landlord R.B. also has the onus to prove the good faith requirement. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am satisfied on a balance of probabilities that it is more likely than not Landlord R.B. intends in good faith to move into the rental unit. There was nothing about Landlord R.B.'s testimony that caused me to question its reliability or credibility. I find Landlord R.B. has submitted compelling documentary evidence to support their testimony that they intend in good faith to move into the rental unit as well as their reasons for the move. There is nothing about the documentary evidence that causes me to question its reliability or credibility. In the circumstances, I find Landlord R.B. has proven the grounds for the July Notice including the good faith requirement.

I note that the Tenant did not submit compelling evidence calling into question Landlord R.B.'s testimony and documentary evidence about their intention to move into the rental unit. I acknowledge that Landlord R.B. has the onus to prove the grounds for the July Notice, and the good faith requirement, and I have found that Landlord R.B. has done so. I simply note that in addition to Landlord R.B. providing compelling evidence to

prove the validity of the July Notice, the Tenant has not provided compelling evidence which calls into question the validity of the July Notice.

The Tenant did not raise an issue with the form or content of the July Notice and therefore I am satisfied it complies with section 52 of the *Act*. Further, I have reviewed the Notice and confirmed it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

Section 49(2) of the *Act* states:

(2) Subject to section 51...a landlord may end a tenancy

(a) for a purpose referred to in subsection (3)...by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

As stated, the Tenant received the July Notice on July 10, 2022. Given this, the effective date is corrected pursuant to section 53 of the *Act* to be September 30, 2022, at 1:00 p.m.

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.

Given the above, I uphold the July Notice and dismiss the Tenant's dispute of the July Notice. Landlord R.B. is entitled to an Order of Possession effective September 30, 2022, at 1:00 p.m., pursuant to section 55(1) of the *Act*.

Filing Fees

I award the Tenant recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act* for their first application because the parties agreed the April Notice can be cancelled and only the July Notice was relevant at the hearing. In my view, the Tenant was therefore successful in their first application and Landlord K.S. is required to reimburse the Tenant for the filing fee. The Tenant is issued a Monetary Order for \$100.00 against Landlord K.S.

The Tenant is not entitled to recover the filing fee for their second application because they were not successful in this application. This request is dismissed without leave to re-apply.

Conclusion

Landlord R.B. is issued an Order of Possession effective at 1:00 p.m. on September 30, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Tenant is issued a Monetary Order for \$100.00 against Landlord K.S. This Order must be served on Landlord K.S. and, if Landlord K.S. does not comply with this Order, it may be filed and enforced in the BC Provincial Court (Small Claims) 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 *Act*.

Dated: August 31, 2022

Residential Tenancy Branch