



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, RR, RP, AAT, LRE, PSF, LAT, OLC, OPB, OPM, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On April 27, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 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 a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking access to the rental unit pursuant to Section 30 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On May 24, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on breach of a vacate clause pursuant to Section 55 of the *Act*, seeking an Order of Possession based on breach of a Mutual Agreement to End Tenancy pursuant to Section 55 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

N.N. attended the hearing as an advocate for the Tenant. The Landlord attended the hearing as well, with C.Z. and B.G. attending the hearing as agents 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 provided a solemn affirmation.

N.N. advised that the Tenant's Notice of Hearing package, and some evidence, was served to the Landlord by hand; however, she was not sure when this was done. C.Z. confirmed that the Landlord received this package on or around the end of May 2022, and that she was prepared to respond to it. Based on this undisputed testimony, I am satisfied that the Landlord was duly served with the Notice of Hearing package and some evidence.

She then advised that additional evidence was served to the Landlord by hand on August 13 or 14, 2022, and that the Tenant did not check to see if the Landlord could view the digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure (the "Rules"). As well, she could not provide any specific reason for why this evidence was served so close to the deadline for service. C.Z. confirmed that the Landlord received this evidence and that the digital evidence could be viewed. As service of the Tenant's evidence complied with the timeframe requirements of Rule 3.14 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

C.Z. advised that the Landlord's Notice of Hearing package was served to the Tenant by hand, but she was not sure when this was done. N.N. acknowledged that the Tenant received this package, but she was not sure when this was served. However, she did not take any issue with service, and she stated that she was prepared to respond to this package. As such, I am satisfied that the Tenant was duly served with the Landlord's Notice of Hearing package.

C.Z. then advised that the Landlord's evidence was served to the Tenant by hand on August 22, 2022; however, the Landlord did not check to see if the Tenant could view the digital evidence pursuant to Rule 3.10.5 of the Rules. N.N. confirmed that the Tenant received this evidence, but he could not view the contents of the USB. As this evidence was not viewable, I have excluded this evidence and will not consider it when rendering this Decision.

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 the Landlord's Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit and the Landlord's request for an Order of Possession. The other claims were dismissed with

leave to reapply. 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to an Order of Possession based on the Mutual Agreement to End Tenancy?
- Is the Landlord 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.

The parties agreed that the most recent tenancy agreement started on November 1, 2021, that rent was established at an amount of \$1,050.00 per month, and that it was due on the first day of each month. A security deposit of \$575.00 was also paid on an earlier tenancy and was transferred with the new tenancy agreement. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

N.N. advised that a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit was never served by the Landlord. As such, this claim is dismissed without leave to reapply.

C.Z. advised that the Landlord and the Tenant signed a Mutual Agreement to End a Tenancy form, but she was not sure when this was signed. The effective end date of the tenancy was noted as June 1, 2022, at 12:00 PM. A copy of this mutual agreement was entered into evidence by the Tenant. She then referenced a typed letter, that both parties signed on March 22, 2022, and March 24, 2022, which clearly indicated that the parties mutually agreed to extend the effective end dated of the tenancy from June 1, 2022, to July 1, 2022. This letter was also submitted by the Tenant as documentary evidence for consideration. As the Tenant had not moved out by this date, the Landlord applied for an Order of Possession.

N.N. confirmed that the Tenant signed both of these documents; however, she claimed that the Tenant did not know what he was signing, and that he believed it was to receive an eviction notice. While she claimed that the Tenant was coerced to sign these forms due to the Landlord entering the rental unit and not leaving until they were signed, she acknowledged that the Tenant was "not forced to sign them." She provided hearsay evidence about what the Tenant told her regarding what actions the Landlord allegedly engaged in. It was N.N.'s position that these actions caused the Tenant to simply sign these forms without reading or understanding them.

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.

I note that Section 55 of the *Act* allows a Landlord to submit an Application for Dispute Resolution seeking an Order of Possession based on a Mutual Agreement to End Tenancy, and I must consider if the Landlord is entitled to that Order if the agreement is valid.

As well, Section 44 of the *Act* allows a tenancy to end by mutual consent of both the Landlord and the Tenant.

In considering this matter, I have reviewed the Mutual Agreement to End a Tenancy form and the typed letter submitted as documentary evidence. I am satisfied that both the Landlord and Tenant signed and agreed to the terms stated in the mutual agreement form and the letter. As well, it is undisputed that the Tenant signed both of these forms. In addition, when reading the typed letter that the Tenant signed on March 24, 2022, it stated that “the tenant and landlord make a mutual agreement which allows tenant to live with current conditions until July 1, 2022.” In my view, it could not be more clearly articulated that this was a mutual agreement to end the tenancy on a particular date.

While N.N. attempted to suggest that the Tenant signed these forms unwittingly, I do not find that there is any compelling or persuasive documentary evidence to establish, on a balance of probabilities, that the Tenant was somehow coerced or physically forced to sign these forms against his will. Furthermore, I find it curious why the Tenant could not attend the hearing to personally speak of these purported behaviours of the Landlord, or provide any documentary evidence to support these allegations. I find that this causes me to find N.N.’s hearsay testimony on this point to be dubious and lacking in credibility. Clearly, the information on these documents is explicitly laid out, and the Tenant had the opportunity to read these forms, to understand them, and then elect to either sign them or not.

Based on my assessment of the evidence before me, I am satisfied that the Landlord and Tenant agreed to mutually end the tenancy on July 1, 2022. As the Tenant failed to vacate the rental unit by this time, I find that the Landlord is entitled to an Order of Possession. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit in **two days**, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt.

Conclusion

As the tenancy is over, the Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service of this Order on the Tenant. 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: August 29, 2022

Residential Tenancy Branch