



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1130 EAST BROADWAY LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNE, OLC, FFT, OPM, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On May 2, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for End of Employment pursuant to Section 47 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 11, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on 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*.

The Tenant attended the hearing, with a E.C. attending as a note taker. T.H. and B.D. attended the hearing as agents for the Landlord. The agents were asked for their position on E.C. attending the hearing as well, and T.H. advised that this person should not be permitted to attend as he was a disruptive force that has caused issues during the tenancy. As this person was not a tenant on the tenancy agreement, the Tenant was asked to have this person leave the room.

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.

The Tenant advised that the Notice of Hearing package was served to T.H. by hand “right away”; however, she was not sure exactly when this was done. T.H. confirmed that she received some typed letter from the Tenant, but she did not believe it was the Notice of Hearing package. Regardless, she stated that she was prepared to proceed.

The Tenant confirmed that she did not submit any documentary evidence for consideration on this file.

T.H. advised that the Landlord’s Notice of Hearing package and some evidence was served to the Tenant by hand on May 20, 2022, and she referenced a proof of service form to corroborate this service. As well, B.D. stated that additional evidence was served to the Tenant by hand on August 15, 2022. The Tenant acknowledged receiving the Notice of Hearing package and some evidence on May 20, 2022. However, she thought that the Landlord’s additional evidence was placed under her door on or around August 15, 2022, but she did receive it. Based on this undisputed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing package. In addition, as the Landlord’s evidence was received pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

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 10 Day Notice to End Tenancy for Unpaid Rent cancelled?

- Is the Tenant entitled to have the One Month Notice to End Tenancy for End of Employment cancelled?
- If the Tenant is unsuccessful in cancelling the notices, 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 Tenant entitled to recover the filing fee?
- 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 tenancy started on March 1, 2022, that rent was established at an amount of \$1,595.00 per month, and that it was due on the first day of each month. The parties could not agree whether a security deposit was paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

T.H. advised that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant on April 25, 2022, by being posted to the Tenant's door. The Tenant confirmed that she received this, and that she disputed the Notice. However, neither party submitted a copy of this Notice for consideration on this file.

The Tenant advised that she was never served with a One Month Notice to End Tenancy for End of Employment and this was disputed in error.

All parties agreed that the Landlord and the Tenant signed a Mutual Agreement to End a Tenancy form on March 23, 2022, with an effective end date of the tenancy being noted as April 30, 2022, at 1:00 PM. A copy of this mutual agreement was entered into evidence by the Landlord. As the Tenant had not moved out by this date, the Landlord applied for an Order of Possession.

The Tenant confirmed that she signed this form; however, she contends that she was lied to by the Landlord as she did not know that she would not be allowed to continue the tenancy.

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 I am satisfied that both the Landlord and Tenant signed and agreed to the terms stated in the mutual agreement.

While the Tenant attempted to suggest that she signed this form 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 this form against her will. Clearly, the information on this form is explicitly laid out, and the Tenant had the opportunity to read it, to understand it, and then to elect whether to sign it 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 April 30, 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 tenancy has ended by way of a mutual agreement, I do not find it necessary to consider the merits of the 10 Day Notice to End Tenancy for Unpaid Rent.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

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.

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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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 *Residential Tenancy Act*.

Dated: September 2, 2022

Residential Tenancy Branch