



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction and Preliminary Matters

On May 6, 2022, the Tenant made an Application for Dispute Resolution 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") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. L.S. attended the hearing as the property manager, and she advised that J.Y. and T.X., who also attended the hearing, were the actual owners of the rental unit. The Tenant did not have any opposition to the owners being added as the Respondents on this Application. As such, the Style of Cause on the first page of this Decision has been amended to reflect the correct name of the Landlords/Respondents.

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.

Service of the Notice of Hearing and the evidence packages were discussed and both parties' documentary evidence was accepted.

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 Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property 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 April 1, 2021, as a fixed term tenancy of one year, ending on March 31, 2022. The tenancy is now a month-to-month tenancy, with rent currently established at an amount of \$1,775.00 per month. Rent is due on the first day of each month. A security deposit of \$875.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

L.S. advised that the Notice was served to the Tenant by posting it to her door and by email on April 26, 2022. The Tenant clearly received this Notice as she disputed it on May 6, 2022. The reason the Landlords served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the Landlords indicated that it would specifically be "The child of the landlord or landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted on the Notice as June 30, 2022.

Submissions were made with respect to the validity of the Notice; however, the parties turned their minds to reaching a full and final settlement agreement. The parties were able to reach an agreement and I have recorded the terms of agreement by way of this Decision, and the Order of Possession and Monetary Order that accompany it.

Settlement Agreement

The parties raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties reached the following full and final settlement agreement during the hearing:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property dated April 25, 2022, is cancelled and of no force or effect.
2. The Tenant will maintain possession of the rental unit until **November 1, 2022, at 1:00 PM**. An Order of Possession will be awarded to the Landlords for this date.
3. The Tenant may withhold rent in the amount of **\$1,775.00**, on October 1, 2022, for October 2022 rent.
4. The Landlords must pay to the Tenant the amount of **\$100.00**.
5. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of this full and final settlement of these disputes.

Conclusion

The parties reached a full and final settlement agreement in resolution of their dispute. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 25, 2022 to be cancelled and of no force or effect.

The Landlords are provided with a formal copy of an Order of Possession effective at **1:00 PM on November 1, 2022 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.

The Tenant is provided with a Monetary Order in the amount of **\$100.00** to serve and enforce upon the Landlords, if the Landlords do not comply with condition four of this settlement. The Order must be served on the Landlords by the Tenant. Should the Landlords 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 9, 2022

Residential Tenancy Branch