



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNL, LRE, FFT
Landlord: OPL, FFL

Introduction

The Tenant finalized their Application for Dispute Resolution on June 6, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"). They also sought to limit the Landlord's right of entry, and reimbursement of the Application filing fee.

On August 28, 2022 the Landlord filed an Application for an Order of Possession based on the same Two-Month Notice, and reimbursement of the Application filing fee. The Tenant's Application was already in place and the Residential Tenancy Branch joined the two Applications.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on November 1, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the other's Notice of Dispute Resolution Proceeding document and prepared documentary evidence.

Preliminary Matter – relevant issues

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is

seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on Two-Month Notice issued by the Landlord. Therefore, I dismiss the Tenant’s request for a suspension or set conditions on the Landlord’s right to enter the rental unit, with leave to reapply.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement in place. Both parties confirmed the tenancy started on August 1, 2017, with the beginning rent amount of \$650 increasing over the course of the tenancy to \$750 as at the date of this hearing.

The Landlord provided a copy of the Two-Month Notice, signed on April 30, 2022. The Landlord provided a “Proof of Service” document showing that they served this document to the Tenant in person on that same date, witnessed by a third party. In the hearing, the Landlord maintained that this account was the true means of service to the Tenant.

The Tenant presented that they did not apply for this hearing until June 28 – not until they received a copy of the Two-Month Notice from the Landlord around June 22. This

was based on a conversation they had with the Landlord when they visited to the rental unit on June 1, 2022. On that date, the Landlord inquired on whether the Tenant would be moving out at the end of June, to which the Tenant replied that they had not received the Two-Month Notice. After this discussion, on “around June 22” the Tenant found a copy of the Two-Month Notice in their rental unit at the end of their bed.

The Tenant recalled a discussion with the Landlord at their same workplace on April 30 on the subject of an end of this tenancy; however, they presented that the Landlord did not serve such paperwork at that time.

To verify their version of events, the Tenant noted that they contacted the Residential Tenancy Branch to dispute the Two-Month Notice; however, they were advised that the Branch could not proceed with their Application until the Tenant obtained a copy of that document. The Tenant originally filed their Application on June 6, 2022. In the Application, the Tenant noted they “just received [the Two-Month Notice] on June 23rd With the landlord entering my suite while I wasn’t home. It was backdated to April 30th which I’ve already expressed I hadn’t had until now.”

On the Two-Month Notice, the Landlord gave the indication that “The father or mother of the landlord or landlord’s spouse” would occupy the rental unit. This is the basement rental unit beneath the Landlord’s own abode. The Landlord presented that their own house presents challenges for their elderly parents who face mobility challenges. In particular, the 30 stairs within the home present particular challenges. This is documented with a note from a medical professional in the Landlord’s own evidence. As well, the Landlord provided pictures of their home’s interior, showing the number of stairs present.

The Tenant presented information they received from a mutual friend (*i.e.*, a friend of both the Tenant and the Landlord) who advised that the Landlord just wanted a space for the leisure activity of drinking with their friends. This individual text message, received “probably near the middle of May” appears in the Tenant’s evidence, reading: “Ya bro n like u know he ain’t really kcikin [*sic*] u out” and “He juss wants that space to drink”

Analysis

The *Act* s. 49(3) states that a landlord may end a tenancy by giving a Two-Month Notice “if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Following this, s. 49(8) states that within 15 days of receiving a notice a tenant may dispute that notice. Where a tenant does not make the application within 15 days, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I find the Landlord credible on their service of the Two-Month Notice to the Tenant in person on April 30, 2022. This service was attested to by a witness in the Proof of Service document that the Landlord provided in their evidence. As well, in their written description, the Landlord is credible because of the level of detail that they gave on the Tenant’s immediate reaction when receiving the Two-Month Notice.

I draw down the Tenant’s credibility on being informed of the existence of the Two-Month Notice only on June 1. For one, the Tenant did not seek to obtain a copy of this vitally important document from the Landlord as soon as possible, and instead left it up to the Landlord who only provided a copy to the Tenant in the rental unit some time after this, around June 22. I find this scenario less likely if the Tenant was aware of a likely end to the tenancy and did not seek the document in question if they did not have it and thereafter sought to challenge that Two-Month Notice in the dispute resolution process.

Additionally, the Tenant dialogued with their friend in mid-May concerning an end to the tenancy; however, if the end of the tenancy was not codified in document form (i.e., with a Two-Month Notice), then I don’t understand why the Tenant was discussing with a friend about the end of this tenancy if it was not tangible in the form of the Two-Month Notice at that time, without it having yet been served to the Tenant.

Finally, the Tenant submitted that the Landlord on June 1 inquired on the Tenant leaving at the end of June; however, that is not what was provided as the end-of-tenancy date on the original Two-Month Notice document – why would the Landlord inquire on an earlier end-of-tenancy date if that is not what they provided for in the original Two-Month Notice? I accept the Landlord’s version of events that this discussion with the Tenant on June 1 did not occur.

For these reasons, I find that the scenario presented by the Tenant is the less likely of the two versions presented by either party, on a balance of probabilities. The Landlord was in all likelihood aware of the need for service of the Two-Month Notice as per the

Act. For the purpose of this decision, I find as fact that the Landlord served the document to the Tenant, as presented in their evidence, on April 30, 2022. I find it more likely than not that the Tenant, realizing they did not have a copy on hand, could not apply to the Residential Tenancy Branch without one, and thereafter obtained another copy from the Landlord after their initial inquiry to the Residential Tenancy Branch.

For these reasons, I dismiss the Tenant's Application to cancel the Two-Month Notice. The tenancy is ending. This is an application of s. 49(9) of the *Act* which provides that where the Tenant does not make an Application within 15 days, they are conclusively presumed to have accepted the tenancy will end.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find the Two-Month Notice complies with the requirements of form and content. It is signed and dated by the Landlord, gives the address of the rental unit, gives the effective date, states the grounds for ending the tenancy, and is in the approved form. For this reason, the Landlord here is entitled to an Order of Possession.

Because the Landlord was successful in their Application for an Order of Possession based on the Two-Month Notice, I grant them reimbursement of the Application filing fee. The Tenant, unsuccessful in their Application, is not entitled to the filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for a cancellation of the Two-Month Notice.

I grant an Order of Possession to the Landlord effective two days after service of the Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100 for the Application filing fee. The Landlord is provided with this order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail

to comply with this Order, it 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 s. 9.1(1) of the *Act*.

Dated: November 1, 2022

Residential Tenancy Branch