



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act"). The participatory hearing was held, via teleconference, on December 1, 2022.

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant confirmed receipt of the Landlord's documentary evidence and Notice of Hearing package. The Landlord stated they received the Tenant's evidence package. No service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in this application deals with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Landlord's application with the exception of the following ground:

- An order of possession based on a 2-Month Notice to End Tenancy for Landlord's use of the property (the "Notice").

The Landlord is granted leave to reapply for any monetary compensation.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession under the *Act*, based off the Notice?

Background and Evidence

The Landlord served the Tenant with the Notice on April 30, 2022. The Tenant acknowledged receiving the Notice this day.

The Notice indicated the following grounds for ending the tenancy:

- 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).
 - The child of the Landlord or Landlord's spouse

The Tenant did not dispute the Notice, and stated she was under the impression that the Landlord was going to dispute it, which is why she didn't. The Tenant feels misled about the end of her tenancy because, despite signing a fixed term tenancy, expiring December 31, 2021 (subsequently extended to June 30, 2022 as per the signed addendum provided), because she was under the impression that she could continue to extend her lease for a few years.

The Landlord stated that they issued the Notice with the same effective date as the end of the most recent fixed term, as this is when they need the property back.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 49(3) of the *Act* permits a landlord to end a tenancy for Landlord's Use. A tenant who receives a notice to end tenancy under this part of the *Act* has 15 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 49(9) of the *Act*.

In this case, the Landlord issued the Notice 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).
 - The child of the Landlord or Landlord's spouse

The Tenant acknowledged receipt of the Notice on April 30, 2022.

The Tenant had 15 days after receipt of this Notice, until May 15, 2022, to dispute it with our office. The Tenant did not dispute the Notice. Assuming the Landlord would dispute it for her, and that that would suffice is not the same as making an application to cancel the Notice. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

Based on this, and the Landlord's testimony supporting why it was issued, I find the Landlord is entitled to an order of possession, which will be effective **two days after service** on the Tenant.

Pursuant to section 72 of the *Act*, I award the recovery of the filing fee paid by the Landlord. I authorize the Landlord to retain \$100.00 from the security deposit held.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this

order the landlord may file the order with the Supreme Court of British Columbia and be 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: December 2, 2022

Residential Tenancy Branch