



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the Four Month Notice to End Tenancy for Demolition (the "Notice"), pursuant to section 49.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent and a landlord of the subject rental property not named in this application for dispute resolution (landlord "Z.K.") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that landlord Z.K., the agent and I were the only ones who had called into this teleconference.

The agent confirmed their email addresses for service of this Decision.

Preliminary Issue- Failure to Attend

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenants failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenants' application without leave to reapply.

Section 55(1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession.

Preliminary Issue- Service

The agent testified that the landlord was served with this application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*. The agent testified that no evidence was served on the landlord. I accept this undisputed testimony.

The agent testified that the tenants were served with the landlord's evidence via registered mail on October 17, 2022 and November 28, 2022. Registered mail receipts for same were entered into evidence. I find that the tenants were deemed served with the landlord's evidence on October 22, 2022 and December 3, 2022, respectively, in accordance with section 88 of the *Act*.

Preliminary Issue- Amendment

In the tenants' application for dispute resolution, the tenants listed persons as tenants who are not listed as tenants on the Tenancy Agreement that was entered into evidence and signed by tenant D.H. Pursuant to section 64 of the *Act*, I remove from the application for dispute resolution the persons listed as tenants who are not listed as tenants on the Tenancy Agreement.

In the tenants' application for dispute resolution the landlord's last name was misplaced. The agent testified to the correct spelling of the landlord's name. Pursuant to section 64 of the *Act*, I amend the tenants' application to correctly spell landlord S.F.A.'s full name.

Issue

1. Is the landlord entitled to an Order of Possession?

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of landlord Z.K. and the agent, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the agent and landlord Z.K.'s claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on September 1, 2021. Monthly rent in the amount of \$3,800.00 is payable on the first day of each month. A security deposit of \$1,900.00 and a pet damage deposit of \$1,900.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenants were told verbally in May of 2022 that the landlord planned on demolishing the subject rental property and building a new home and were waiting on obtaining the permits to do so. The agent testified that the above communication was a courtesy to the tenants. The agent testified that the tenants told him that they are building their own home which will be ready in February 2023 and asked to be permitted to stay until then. The agent testified that the landlords did not agree.

The agent testified that the landlords received a demolition permit for the subject rental property on June 28, 2022 and personally served the tenants with the Notice on June 29, 2022. The agent entered into evidence a hand delivery confirmation signed by tenant P.H. confirming the above testimony. The tenants filed to dispute the Notice on July 21, 2022.

The Notice was entered into evidence, is signed by the landlord and landlord Z.H., is dated June 29, 2022, gives the address of the rental unit, states that the effective date of the notice is October 31, 2022, is in the approved form, #RTB-29, and states the following ground for ending the tenancy:

Demolish the rental unit

The permit number provided by the subject rental city is also provided on the Notice.

The agent entered into evidence a demolition permit for the subject rental property that was issued on June 28, 2022 and expires on December 25, 2022 if there is no construction activity.

The agent also entered into evidence invoices for expenses incurred by the landlord in order to obtain the permit including:

- Compliance reports and new home registrations fee;
- Structural design for single family home;
- Topographical survey over subject rental property; and
- Architect and engineering fees.

The agent testified that the tenants told them that they were disputing the Notice as a delay tactic to allow them to stay in the subject rental property until their home was ready.

The tenant's application for dispute resolution did not state a reason the tenants were disputing the Notice, just that the landlord's wanted to demolish the house.

Analysis

Based on the testimony of the agent and the hand delivery confirmation entered into evidence, I find that the tenants were served with the Notice on June 29, 2022, in accordance with section 88 of the *Act*.

Section 49(6)(a) of the *Act* states:

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a)demolish the rental unit;

Based on the agent's undisputed testimony, the valid demolition permit and all the supporting invoices entered into evidence, I find that the agent has proved, on a balance of probabilities, that the landlord intends in good faith to demolish the rental unit and has all the necessary permits and approvals required by law to do so. The Notice is therefore upheld.

I accept the agent's undisputed testimony that the tenants informed him that they were only disputing the Notice to delay their departure from the subject rental property. I caution the tenants that intentional future delay lacking in merit may receive a penalty under section 95 of the *Act*.

Section 55(1) and section 55(1.1) of the *Act* state:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #29.

Since I have dismissed the tenants' application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession pursuant to section 55(1) of the *Act*.

Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants and all other

occupants 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: December 12, 2022

Residential Tenancy Branch