



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPM, CNL-4M-MT, MNRL, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent or utilities, and to recover the fee for filing an Application for Dispute Resolution. The Landlord has named the Tenant with the initials “DE” in the Landlord’s Application for Dispute Resolution and, as such, any Order granted to the Landlord on the basis of the Landlord’s Application for Dispute Resolution will only name “DE”.

The Landlord stated that on September 05, 2022 the Dispute Resolution Package was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a Four Month Notice to End Tenancy, for more time to file an application to cancel a Four Month Notice to End Tenancy, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Tenant stated that he intended to dispute a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that the Dispute Resolution Package was sent to the Landlord, via registered mail, although he cannot recall the date of service. The Tenant stated that the package mailed to the Landlord was returned by Canada Post and that he made no attempt to re-serve those documents to the Landlord.

The Landlord stated that he was out of the county and he did not receive notice of the registered mail sent to him by the Tenant. He stated that he was, therefore, unaware of that the Tenant had filed an Application for Dispute Resolution until he was informed of the Tenants' Application for Dispute Resolution by the Residential Tenancy Branch. He stated that he understood the Tenant was applying to dispute the mutual agreement to end a tenancy in his Application for Dispute Resolution, which he is prepared to respond to at these proceedings. He stated that he was not aware that the Tenant was applying to dispute a Two Month Notice to End Tenancy for Landlord's Use and he is not prepared to respond to that issue at these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

While I accept that the Tenants have properly served the Landlord with the Tenants' Application for Dispute Resolution, I am satisfied that the Landlord did not receive the Tenants' Application for Dispute Resolution.

At the hearing the parties were advised that I would consider the Landlord's Application for Dispute Resolution at these proceedings and that I would hear the Tenant's Application for Dispute Resolution at a later time and date.

Upon reflection, I have concluded that I do not have jurisdiction to consider the Tenants' Application for Dispute Resolution. Reasons for this decision are explained later in this decision.

As I have concluded that I do not have jurisdiction to consider the Tenants' Application for Dispute Resolution, all issues at these proceedings will be addressed in this decision.

Preliminary Matter #2

The Landlord applied to amend the Application for Dispute Resolution to include unpaid rent for all rent that became due after August 01, 2022.

I find that it was reasonable for “DE” to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since August 01, 2022. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession on the basis of a mutual agreement to end the tenancy and to a monetary Order for unpaid rent or unpaid utilities?

Am I able to consider the Tenants’ application to dispute a notice to end tenancy and/or the application for more time to file an application to dispute a notice to end tenancy?

Background and Evidence

The Landlord and the Tenant with the initials “DE” agree that:

- The parties entered into a written tenancy agreement for the entire residential complex for a tenancy that began on May 01, 2021;
- The written tenancy agreement names “DE” as the tenant;
- The written tenancy agreement does not name “CE” as a tenant;
- “DE” agreed to pay \$2,200.00 in rent;
- Rent is due by the first day of each month;
- “DE” was served with a Two Month Notice to End Tenancy for Landlord's Use which declared that the tenancy was ending on April 01, 2022;
- On, or about, February 16, 2022, the Landlord and “DE” signed a mutual agreement to end tenancy in which they agreed the tenancy would end of September 01, 2022;
- The rental unit has not been vacated;
- No rent has been paid for any period after August 01, 2022; and
- “DE” did not receive the equivalent of one month’s rent in compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use.

“DE” stated that he did not vacate the rental unit in accordance with the mutual agreement to end the tenancy because the parties signed a new lease sometime in May of 2022. He stated he is looking at the new lease, which does not declare the start date

of the new tenancy. He stated that a copy of the new lease was submitted to the Residential Tenancy Branch as evidence for these proceedings.

The Landlord stated that the parties did not enter into a new tenancy agreement after May 01, 2021 and he has never seen this alleged new tenancy agreement.

“DE” stated that he has not paid rent since August 01, 2022 as the house has been sold and he has never been informed of who the rent should be paid to. He stated that the house was sold “around” July of 2022. He stated that when the house was sold, he was never told that he should pay rent to any other person. He acknowledges that he was never informed that he should not continue to pay rent to the Landlord.

The Landlord stated that the house was sold on October 07, 2022. He stated that he has an agreement with the new owner to pay monthly compensation of \$2,200.00 to the new owner, plus utilities, until such time as the rental unit has been vacated. He stated that this agreement is based on the seller’s understanding that the Landlord would continue to collect rent from “DE”.

Analysis

On the basis of the undisputed testimony, I find that the Landlord and “DE” entered into a tenancy agreement, which required “DE” to pay monthly rent of \$2,200.00 for the entire residential complex.

Section 49 of the *Act* permits a landlord to end a tenancy for a variety of reasons by serving the tenant with a Two Month Notice to End Tenancy for Landlord's Use. On the basis of the undisputed evidence, I find that “DE” was served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that “DE” must vacate the unit by April 01, 2022.

Section 49(8) of the *Act* permits a tenant to dispute a Two Month Notice to End Tenancy for Landlord's Use that is served pursuant to sections 49(3)(4) or (5) of by filing an Application for Dispute Resolution within fifteen days after receiving the Notice. Section 49(8) of the *Act* permits a tenant to dispute a Two Month Notice to End Tenancy for Landlord's Use that is served pursuant to section 49(6) of by filing an Application for Dispute Resolution within thirty days after receiving the Notice. I find that the Tenants did not dispute the Two Month Notice to End Tenancy for Landlord's Use that declared

they must vacate the unit by April 01, 2022 within the timelines established by section 49(8) of the *Act*.

Section 66(1) of the *Act* permits me to extend a time limit established by the *Act* in exceptional circumstances. Section 66(3) of the *Act* prevents me from extending a time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Branch records show that the Tenant's Application for Dispute Resolution was filed on August 09, 2022. As the Tenants' application to dispute the Two Month Notice to End Tenancy was filed well after the effective date of the Two Month Notice to End Tenancy for Landlord's Use, I must dismiss the Tenants' application for more time to file that application.

As the application to dispute the Two Month Notice to End Tenancy for Landlord's Use was not submitted on time, I am declining to consider the application, pursuant to section 58(2)(c) of the *Act*, as the application was not made within the applicable time period. I simply do not have jurisdiction to consider the application.

On the basis of the undisputed evidence, I find that "DE" and the Landlord entered into a mutual agreement to end the tenancy, effective September 01, 2022. I therefore find that this tenancy ended on September 01, 2022, pursuant to section 44(1)(c) of the *Act*. As the Tenant has not yet vacated the rental unit, I grant the Landlord and Order of Possession.

In deciding this matter, I have placed no weight on "DE"s testimony that a new lease was signed sometime in May of 2022. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this testimony or that refutes the Landlord's testimony that one was not signed. I specifically note that I was unable to locate that document in the evidence, although the "DE" alleges it was submitted.

As "DE" did not vacate the rental unit on September 01, 2022 on the basis of the mutual agreement to end the tenancy, I find that "DE" is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As "DE" is still living in the unit, I find that he is obligated to pay rent for the period between August 01, 2022 and January 10, 2023, in the amount of \$11,709.70. (5 months plus 10 days of per diem rent at \$70.97 per day)

I decline to award compensation for the entire month of January, as it is possible that the Tenant will vacate by the end of today.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As there is no dispute that the "DE" was served with a Two Month Notice to End Tenancy for Landlord's Use, I find that he is entitled to the compensation specified in section 51(1) of the *Act*. I specifically note that there is nothing in the *Act* that suggests this compensation should not be paid even if the tenancy ends on another date for a different reason.

As the Tenant is entitled to compensation that is the equivalent of one month's rent payable under the tenancy agreement, I find that the amount of rent currently due should be reduced by \$2,200.00. This is to reflect the compensation due pursuant to section 51(1) of the *Act*.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the rental unit was sold on October 07, 2022 and that he has authority from the new owner to continue to collect rent for the rental unit until the rental unit has been vacated. I therefore find that the Landlord had the right to continue to collect rent for the rental unit after October 07, 2022, as he was acting as an agent for the new owner.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

I find that the Tenants have failed to establish a right to file an application to dispute the Two Month Notice to End Tenancy for Landlord's Use and I therefore find the Tenants are not entitled to recover the fee for filling his Application for Dispute Resolution.

Conclusion

As the application to dispute the Two Month Notice to End Tenancy for Landlord's Use was not submitted on time, I have declined to consider the application, pursuant to section 58(2)(c) of the *Act*.

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$9,609.70, which includes \$9,509.70 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$9,509.70. In the event “DE” does not comply with this Order, it may be served on “DE”, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: January 10, 2023

Residential Tenancy Branch