



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation - Section 67;
3. An Order for repairs - Section 32; and
4. An Order for the Landlord to comply - Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties each confirm receipt of the other’s evidence and are prepared to proceed.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the compensation claim is not related to the matter of whether the tenancy will end, I dismiss this claim with leave to reapply. Leave to reapply is not an extension of any limitation period.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order for the Landlord’s compliance?

Is the Tenant entitled to repairs to the unit?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on April 1, 2022. Rent of \$800.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$400.00. On February 1, 2023 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use dated February 1, 2023 (the "Notice"). The Notice sets out an effective date of April 1, 2023. The reason stated on the Notice is that the child of the Landlord will occupy the unit. A copy of the Notice is provided as evidence. The Landlord's adult child provides a letter setting out their intention to occupy the unit. The Tenant tends to believe that this adult child will move into the unit.

The Tenant seeks a change to the effective date of the Notice.

Analysis

Section 49(2)(a) of the Act provides that a landlord may end a tenancy for landlord's use by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, incorrect effective dates are automatically changed to be in compliance. Based on the undisputed evidence that the Landlord served the Notice on February 1, 2023 and the same day that rent is payable, I find that the Notice contains an incorrect effective date that is automatically corrected to April 30, 2023. I therefore order the Landlord to comply with this move-out date.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Given the Landlord's supported evidence of the child's intention to reside in the unit and the Tenant's tendency to believe this will occur,

I find on a balance of probabilities that the Tenant has not substantiated that the Notice is not valid for its reason. I therefore dismiss the claim to cancel the Notice. As the tenancy will end, I dismiss the claim for repairs.

Section 55(1) of the Act provides that 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.

Section 51 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

As the Notice has been found valid and as the Notice complies in form and content I find that the Landlord is entitled to an order of possession effective 1:00 p.m. on April 30, 2023.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on April 30, 2023. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to

comply with the order, the order may be filed in the Supreme Court of British Columbia 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: March 27, 2023

Residential Tenancy Branch