



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1358481 B. C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-MT, FFT
OPM, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on November 24, 2022. The Tenant applied to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated May 31, 2022, for more time to file to dispute the Notice, and to recover the filing fee paid for their application.

The Landlord’s Application for Dispute Resolution was made on December 21, 2022. The Landlord applied to enforce a mutual agreement to end the tenancy signed on July 27, 2022, and to recover the filing fee paid for their application.

An Agent for the Landlord (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to more time to file to dispute the Notice?
- Should the Notice dated May 31, 2022, be cancelled pursuant to section 49 of the *Act*?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Is the Tenant entitled to recover the filing fee paid for their application?
- Is the Landlord entitled to recover the filing fee paid for their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on November 1, 2005, as a one-year fixed term tenancy that rolled into a month-to-month after the first year. Rent in the amount of \$984.55 is to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$400.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Notice was served on May 31, 2022, by posting it on the front door of the rental unit. The Tenant submitted a copy of the Notice into documentary evidence. The Notice indicated that the Tenant was required to vacate the rental unit as of July 31, 2022. The reason checked off by the Landlord within the Notice was as follows:

- 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).
Please indicate which close family member will occupy the unit.
 - The father or mother of the landlord or the landlord's spouse
- The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Notice informed the Tenant of the right to dispute the Notice within 15 days after receiving it. The Notice also informed the Tenant that if an application to dispute the

Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

During the hearing, the Landlord agreed to a March 31, 2023, move-out date.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the submission of the Tenant, that they were served the Notice when the Landlord posted it to the front door of the Tenant's rental unit on May 31, 2022. Pursuant to section 90 of the *Act*, I find that the Tenant was deemed to have received the Landlord's Notice to end the tenancy on June 3, 2022, three days after it was posted to the front door of the rental unit.

Section 49(8) of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until June 18, 2022, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on November 24, 2022, within the required timeline which is outside the statutory time limit to file to dispute and after the effective date of this Notice.

The Tenant has also filed to request additional time to file to dispute the Notice, pursuant to section 66 of the *Act*. Section 66(3) of the *Act* states that an extension of time may only be granted if the party has filed before the effective date of the notice, stating the following.

Director's orders: changing time limits

66 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52 (3) [starting proceedings] or 74 (4) [decision on application for review].*

(2) *Despite subsection (1), the director may extend the time limit established by section 39 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:*

(a) the extension is agreed to by the landlord;

(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice

I have reviewed the Notice to end tenancy and the Tenant's application for these proceedings, and I find that based on when the Tenant was deemed to have received this Notice, June 3, 2022, the effective date for this two-month notice would have been August 31, 2022. I note that the effective date recorded on this Notice was July 31, 2022; however, pursuant to section 53 of the *Act*, I find that the effective date of this Notice automatically changed to August 31, 2022, based on when the Notice was deemed received.

As stated above the Tenant filed to dispute the Notice on November 24, 2022, therefore, their application was made 85 days after the effective date of this Notice. Pursuant to section 66(3) of the *Act*, I am not able to consider the Tenant's request to extend the timeline to file their application, as this request was made after the effective date of the Notice. Consequently, I dismiss the Tenant's request to extend the time limit to file.

As the Tenant's request to extend that time limit has also failed, I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice. Therefore, I must dismiss the Tenant's application to dispute the Notice.

Section 55(1) of the *Act* states the following:

Order of possession for the landlord

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.*

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act* and that the Landlord is entitled to an order of possession.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on March 31, 2023**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Additionally, both parties are reminded of their rights and responsibilities pursuant to section 51 of the *Act*, regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51(2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As I have determined that this tenancy will end under the Notice, I find that there is no requirement for me to render a find on the validity of the mutual agreement to end tenancy, as requested in the Landlord's application, in this decision.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the filing fee paid for this application.

As the Landlord has been successful in their application to obtain an order of possession of the rental unit, I find that the Landlord is entitled to recover the filing fee paid for their application. I grant the Landlord permission to retain \$100.00 from the security deposit for this tenancy in full satisfaction of this award.

Conclusion

The Tenant's Application to cancel the Notice, issued May 1, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on March 31, 2023. The Tenant must be served with this Order. Should the Tenant 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: March 27, 2023

Residential Tenancy Branch