



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; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms receipt of the Landlord’s evidence. The Parties confirm that Tenant TZ is not named as a tenant on the tenancy agreement but is named as an occupant.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on October 1, 2020. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit. Rent of \$1,725.50 is payable on the first day of each month. The Tenant received a two month notice to end tenancy for landlord’s use dated February 17, 2023 (the “Notice”) by email without having authorized the Landlord to serve documents by email. The Landlord also sent the Notice by registered mail however the Tenant did not receive this mail. The Notice sets out an effective date of April 30, 2023.

The reason for ending the tenancy as set out on the Notice is that the Landlord or the Landlord's spouse will occupy the unit.

The Landlord states that the Landlord, the Landlord's spouse and the Landlord's child will occupy the unit. They are moving into the unit as they need to downsize their housing due to finances. The Landlord provides an estimate for the move and storage of their household goods.

The Tenant states that they have no evidence of the Landlord not having a good faith intention to occupy the unit as stated on the Notice. The Tenants are seeking a longer period of time to remain in the unit due to medical procedures on one of the Tenants. The Landlord does not wish to extend the effective date of the Notice.

Analysis

Section 71(2)(c) of the Act provides that the director may order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. Although the Tenant's evidence is that the Notice was received by email without having authorized this form of service, as the Tenant did receive the Notice, made an application to dispute this Notice and provided a copy of this Notice as evidence for their dispute, I find that the Notice has been sufficiently served for the purpose of the dispute under this Act.

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. As there is no evidence to dispute the good faith intention of the Landlord to occupy the unit and given the Landlord's evidence of the reason and the plans for the move into the unit, I find on a balance of probabilities that the Landlord has substantiated their good faith intention to occupy the unit. The Notice is therefore valid, and I dismiss the Tenant's claim to cancel the Notice. As the Tenant has not been successful with their claim, I find that they are not entitled to recovery of

the filing fee, and I dismiss this claim. In effect the application is dismissed in its entirety.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 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, and
- (e) when given by a landlord, be in the approved form.

As the Notice has been found valid and complies in form and content, I find that the Landlord is entitled to an order of possession effective on the same effective date of the Notice.

Conclusion

The Tenant's application is dismissed.

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: April 06, 2023

Residential Tenancy Branch