



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPL-4M, FFL**

Introduction

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act* (Act) for:

1. An Order of Possession for a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Four Months' Notice") under Sections 49(6), 55 and 62 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, the Tenant, and her assistant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

One Landlord and her sister-in-law served the Four Months' Notice on the Tenant on September 15, 2022 by placing the document in her mail box or mail slot. The Landlord uploaded a witnessed Proof of Service form #RTB-34 attesting to service of the Four Months' Notice. The Tenant stated she did not receive anything in her mail box, and that she only received a text message. I find that the Four Months' Notice was deemed served on the Tenant on September 18, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package-OP and evidence on February 7, 2023 by Canada Post registered mail (the “NoDRP package-OP”). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision.

The Canada Post website said on February 9, 2023, the “Recipient not located at address provided. Item being returned to the sender.” The Tenant said she did receive a Canada Post delivery, but it was addressed to the Landlord. I note on February 6, 2023, the Landlord sent an email to the Tenant, attaching the Four Months’ Notice, the building permit, and the temporary street permit for this matter. I find this matter is so important to the Landlords, that they would not address a package to themselves meant for the Tenant’s receipt. I find that the Tenant was deemed served with the NoDRP package-OP five days after mailing them on February 12, 2023 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for a Four Months’ Notice to End Tenancy For Demolition?
2. Are the Landlords entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy in June 2016. There were several fixed terms, then on March 1, 2022 the tenancy continued on a month-to-month basis. Monthly rent is \$3,200.00 payable on the first day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$800.00 were collected at the start of the tenancy and are still held by the Landlord. The Tenant stated she paid \$500.00 per pet at the start of her tenancy for a total pet damage deposit of \$2,500.00.

The reason noted on the Landlords’ Four Months’ Notice was that they will be demolishing the rental unit, and they have obtained all the permits and approvals

required by law to do this work. The work will begin with a salvage and abatement process, then the demolition of the home, and a complete construction of a new home for the Landlords. The effective date on the Four Months' Notice was January 31, 2023.

The Landlords will be demolishing the residential property and building a new home for themselves. They testified that the first step in the process is a salvage and abatement which encompasses testing for asbestos and hazardous materials. For this work, the house must be empty.

The Landlords acquired a demolition and deconstruction permit on August 16, 2022 in preparation for the demolition of the home. There are time limits for work to be completed, and if not done, the Landlords would be required to pay for the permitting again.

The Landlords uploaded an undated text message which stated, "... *This form is dated for an end tenancy date of January 31st, 2023. We later agreed, in good faith, to end your tenancy on February 28th, 2023.*"

The Tenant does not believe that the Landlords 'really have the proper permits to do this demolition'. Her assistant stated he has not seen all the permits.

The Landlords argue they have done their due diligence, and they seek an Order of Possession as soon as possible.

The Tenant said she did not get proper notice and wants the Four Months' Notice cancelled.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: landlord's use of property

49 ...

- (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

...

- (b) *for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be*
- (i) *not earlier than 4 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, and*
 - (iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.*

...

- (6) *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;*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*

- (8) *A tenant may dispute*

...

- (b) *a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.*

- (9) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant*
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit by that date.*

The Tenant was deemed served with the Four Months' Notice on September 18, 2022. I find that the Four Months' Notice complied with the form and content requirements of Section 52 of the Act. The Tenant did not apply for dispute resolution, and pursuant to Section 49(9), I find the Tenant is conclusively presumed to have accepted that the tenancy ended on February 28, 2023 which was a later date the Landlords provided to the Tenant in good faith.

The Landlords testified that they have all the permits for this planned demolition beginning with a salvage and abatement process. The Landlords uploaded all their building permits for this project, and need to commence the work before timelines on the permits expire. I find the Landlords' have done their due diligence in this matter and based on a balance of probabilities the Four Months' Notice is valid.

I must consider if the Landlords are entitled to an Order of Possession. Section 55 of the Act states:

Order of possession for the landlord

55 ...

- (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

...

The Tenant did not dispute the Landlords' Four Months' Notice, and I find the Landlords are entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act. The Order of Possession will be effective within two (2) days after service on the Tenant.

In addition, having been successful, I find the Landlords are entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Landlords' application for dispute resolution is granted.

I grant an Order of Possession to the Landlords, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

The Landlords may deduct the \$100.00 application filing fee from the security deposit due to the Tenant.

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: May 31, 2023

Residential Tenancy Branch