



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPL, FFL, CNL, OLC

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Landlord on May 5, 2024, and Applications filed by the Tenant on May 8 and 15, 2024.

The Landlord applied:

- an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under sections 49 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant applied:

- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on May 7, 2024, by registered mail in accordance with section 89(1) of the Act. A copy of the tracking number was submitted by the Landlord as evidence.

I find that the Landlord was served in accordance with section 89(1) of the Act for the application to cancel the Landlord's Two Month Notice under section 49 of the Act. I find that the Landlord was not served in accordance with section 89(1) of the Act for the application to order the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act.

Preliminary Issue – Notice

At the outset of the hearing, B.S.P.B. testified that only one Notice of Dispute Resolution Proceedings was served to the Landlord. B.X. confirmed that the Landlord only received notice for the Tenant's application to cancel the Two Month Notice under section 49 of the Act.

Based on the testimony of the parties, I find that the Tenant did not serve notice to the Landlord as required under section 89(1) of the Act regarding their application to order the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act. I therefore dismiss this application without leave to reapply.

Issue(s) to be Decided

1. Should the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled? If not, should the Landlord be granted an Order of Possession under sections 49 and 55 of the Act?
2. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by both parties indicates that the tenancy began on December, 2019, with a monthly rent of \$1,950.00 due on the first of each month. A security deposit in the amount of \$1000.00 was paid. The tenancy began under a landlord not named in this dispute and later was transferred to the current Landlord after the property was purchased on June 20, 2023. Copies of the original tenancy agreement and property purchase documents were submitted as evidence.

According to the Landlord, the Tenant was served the Two Month Notice on March 31, 2024, in person as the Landlord intends to move into the property. Copies of the notice and proof of service of the notice were submitted as evidence.

She further testified that her son and his wife and young child are returning to Canada and will be moving into her current residence, which is a house, along with her elderly parents and that herself and her husband will be moving into the suite under dispute because the residence is not suitable for four generations to occupy together. A copy of airline tickets for three persons indicating a flight from China arriving in Vancouver, BC on July 1, 2024, was submitted as evidence.

Tenant support B.S.P.B. testified that the Landlord knocked on their door on March 31, 2024, but that they told the Landlord it was too late to be attending their residence and declined to accept the notice. She further testified that they did not know about the notice until May 1, 2024, when the Landlord messaged them about it on WhatsApp.

Tenant support B.S.P.B. testified that the Landlord advised them on the day the house was purchased that the rent was insufficient to cover the mortgage. She testified the Landlord subsequently advised them that her mother and father would be moving in when they returned from China. She testified that they do not believe the Landlord intends to move in herself.

Analysis

Should the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled? If not, should the Landlord be granted an Order of Possession under sections 49 and 55 of the Act?

Based on the evidence submitted, the testimony provided and on a balance of probabilities, I find that the Tenant received the Two Month Notice to End Tenancy for Landlord Use on March 31, 2024, in accordance with sections 88 and 90 of the Act.

Section 49(8) and 49(9) of the Act state:

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(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.

I find that the Tenant filed an application for dispute resolution on May 15, 2024.

I find that the Tenant received the notice to end tenancy on March 31, 2024, but did not file an Application for Dispute Resolution to dispute the notice within 15 days of receiving it as prescribed under section 49(8) of the Act and therefore the Tenant is conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ends on the effective date of the notice and that they were required to vacate the rental unit by May 31, 2024.

As the Tenant has not vacated the unit by the effective date of the notice, I find that the Landlord is entitled to an Order of Possession under sections 49 and 55 of the Act.

Based on the length of the tenancy, the current conditions in the rental market and the involvement of minors, I set the effective date of the Order at 1 pm on July 31, 2024.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$100.00** under section 72 of the Act.

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on July 31, 2024, after service of this Order on the Tenant.** Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenant's application for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord Use (Two Month Notice) under section 49.1 of the Act is dismissed, without leave to reapply.

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: June 26, 2024

Residential Tenancy Branch