



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”), and to recover the cost of the filing fee.

The tenant and landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

Both parties confirmed having received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?
- Is the tenant entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on May 12, 2014. Monthly rent in the amount of \$300 is due on the first day of each month. A security deposit of \$300 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed that he was served on May 20, 2015 with the 2 Month which was dated May 20, 2015. The effective vacancy date on the 2 Month Notice is listed as July

31, 2015. The tenant disputed the 2 Month Notice on June 4, 2015, which was not within the allowable time limitation under the *Act* of 15 days. Page two of the 2 Month Notice indicates the reason as “The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.”

The landlord made a verbal request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord’s Use of Property – The tenant disputed the 2 Month Notice on June 4, 2015, and confirmed that he received the 2 Month Notice on May 20, 2015. Section 49(8) of the *Act* indicates that an application to dispute a 2 Month Notice is to be made within 15 days of receiving the notice. The last opportunity to dispute the 2 Month Notice was on June 3, 2015. Pursuant to section 49(9) of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 2 Month Notice which is July 31, 2015.

Based on the above and on the balance of probabilities, **I find** that the tenant’s application must be dismissed as the tenant is conclusively presumed to have accepted that the tenancy ended on July 31, 2015 by failing to dispute the 2 Month Notice within 15 days as required by section 49(8) of the *Act*. Therefore, **I dismiss** the tenant’s application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice issued by the landlord with an effective vacancy date of July 31, 2015. The landlord verbally requested an order of possession during the hearing. Section 55 of the *Act* states:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.** [emphasis added]

Given the above and taking into account the landlord's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **July 31, 2015 at 1:00 p.m.**, which is the effective date on the 2 Month Notice.

As the tenant's application did not have merit, **I do not grant** the tenant the recovery of the filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice has been dismissed. The 2 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective July 31, 2015 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 14, 2015

Residential Tenancy Branch

