



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, CNL, OLC

Introduction

The hearing was convened in response to cross applications.

On September 16, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Landlord's Use of Property.

On October 08, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel an Order of Possession for Landlord's Use of Property; for more time to apply to cancel an Order of Possession for Landlord's Use of Property; and to recover the cost of emergency repairs.

English is not the Landlord's first language and she was, therefore, communicating with the assistance of an interpreter, who also had limited command of English. Although the language barrier made communications difficult, I am satisfied that the Landlord was able to discuss the issues that were relevant to my decision.

The Landlord stated that on September 19, 2015 the Application for Dispute Resolution, the Notice of Hearing, a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property; and a Proof of Service were personally served to the Tenant. The Tenant stated that he only received the Application for Dispute Resolution and the Notice of Hearing from the Landlord on September 19, 2015.

The Tenant stated that on October 08, 2015 the Application for Dispute Resolution, the Notice of Hearing, and photocopies of the front of two envelopes were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

The Tenant stated that he thought he submitted a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 21, 2015, to the Residential Tenancy Branch when he filed his Application for Dispute Resolution. He was advised that I could not locate a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property in his evidence package.

The Tenant was advised that there is a copy of the Two Month Notice to End Tenancy for Landlord's Use in the documents the Landlord submitted to the Residential Tenancy Branch, which has not been accepted as evidence as the Tenant did not acknowledge receiving that

document as evidence for these proceedings. After verifying the content of that Notice to End Tenancy, the Tenant agreed that the Two Month Notice to End Tenancy for Landlord's Use that was submitted in evidence by the Landlord is the Notice to End Tenancy that he is disputing. He agreed that the Notice to End Tenancy that was submitted by the Landlord could be accepted as evidence for these proceedings, as he has been previously served with that document and he wishes to rely on the document to support his application to set aside that Notice to End Tenancy.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find it reasonable to consider the most urgent issue(s) in dispute at these proceedings, which are the Tenant's application to set aside a Two Month Notice to End Tenancy for Landlord's Use and the Landlord's application for an Order of Possession. These are the only two issues that will be considered at these proceedings.

In my view the Tenant's application to recover the cost of emergency repairs is not sufficiently related to the other issues in dispute and that claim, is hereby severed. The Tenant retains the right to file another Application for Dispute Resolution in which he claims compensation for the cost of emergency repairs.

Issue(s) to be Decided

Should the Tenant be granted more time to apply set aside a Two Month Notice to End Tenancy for Landlord's Use of Property?

Is the Landlord is entitled to an Order of Possession or should the Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

Background and Evidence

The Tenant stated that he moved into the rental unit on June 01, 2007; that he signed a tenancy agreement when his tenancy first began; that the Landlord purchased the property in July of 2015; that he current rent is \$1,022.00; and that his rent is due by the first day of each month.

The Landlord stated that the Tenant moved into the rental unit before the Landlord purchased the property in July of 2015; that the Tenant signed a tenancy agreement when the previous Landlord; that the current rent is \$750.00; and that the rent is due by the first day of each month.

The Landlord and the Tenant agree that:

- on August 21, 2015 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by October 31, 2015; and

- the Notice to End Tenancy declared that the Landlord is ending the tenancy because the rental unit will be occupied by the Landlord, the Landlord's spouse, or a close family member of the Landlord.

The Tenant stated that sometime in September of 2015 he located evidence that caused him to believe the rental unit is not going to be occupied by the Landlord, the Landlord's spouse, or a close family member of the Landlord. He stated that he decided to dispute the Notice to End Tenancy after he discovered that evidence. The evidence he located is two pieces of bulk mail addressed to two parties who have are not known to him, which was mailed to the residential complex.

The Tenant stated that he did not realize he had to dispute the Two Month Notice to End Tenancy for Landlord's Use of Property within fifteen days of receiving it until I advised him of that deadline during the hearing. He stated that he has a reading disability.

Analysis

Section 66(1) of the *Residential Tenancy Act (Act)*, authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation, would be that the Tenant was hospitalized for an extended period after receiving the Notice.

In the circumstances before me, I do not find that the reasons provided by the Tenant are strong and compelling reasons for being unable to dispute the Notice to End Tenancy within 15 days of receiving the Notice. In reaching this conclusion I was influenced, to some degree, by the amount of time that passed between the date the Tenant received the Notice and the date he disputed the Notice. I find approximately six weeks to be an inordinate delay.

In determining that the Tenant did not have strong and compelling reasons for being unable to dispute the Notice to End Tenancy within the legislated time period I was further influenced by his submission that the delay was due to him discovering evidence after the deadline. In my view the evidence he discovered, which is simply bulk mail addressed to two people he does not know, is not strong evidence to support his suspicion that the rental unit will not be occupied by the Landlord or someone related to the Landlord.

In determining that the Tenant did not have strong and compelling reasons for being unable to dispute the Notice to End Tenancy within the legislated time period I placed little weight on the Tenant's testimony that he has a reading disability. In the event a person with a disability that prevents him/her from understanding a legal document that has been served, the party has the option of contacting the Residential Tenancy Branch or a third party to help them understand the legal document. In some circumstances I would extend a legislated time period if there had been a reasonable delay that is related to an effort to obtain assistance understanding a legal document however that does not appear to be the situation in these circumstances.

On this basis, I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

On the basis of the undisputed evidence, I find that the Tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property, served pursuant to section 49 of the *Act*, which declared that he must vacate the rental unit by October 31, 2015.

Section 49(6) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenants dispute the notice within fifteen days of receiving it. As there is no evidence that the Tenant did not file an Application to dispute the Notice to End Tenancy until approximately six weeks after he received the Notice, I find that he accepted that the tenancy was ending October 31, 2015, pursuant to section 49(6) of the *Act*.

As the Tenant is conclusively presumed to have accepted that this tenancy is ending, I set aside the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use of Property and I grant the Landlord's application for an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on March 31, 2015. This Order may be served on the Tenant, filed with 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 *Residential Tenancy Act*.

Dated: October 26, 2015

Residential Tenancy Branch

