Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF

Introduction

This hearing was convened in relation to the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the 12 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both tenants attended the hearing and provided testimony. The landlord was represented at the hearing by her two agents. The landlord's agents were her son and daughter in law. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agents testified as well as one witness SU.

The tenants confirmed that they received the 2 Month Notice from SU on 1 October 2015.

The tenants' filed their application for dispute resolution on 25 November 2015. The agent DZ confirmed that SU received the tenants' dispute resolution package on 25 November 2015 in person.

Preliminary Issue – Service of Evidence

The landlord did not serve the tenants with the evidence provided to the Residential Tenancy Branch.

Rule 3.15 sets out that an applicant must receive evidence from the respondent not less than seven days before the hearing. The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where a party does not comply with rule 3.15, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

On the basis that the evidence was not served to the tenants, I find that the tenants would be unduly prejudiced by the admission of the evidence. The landlord's evidence is excluded. I informed the parties of this decision at the hearing.

Background

This tenancy began in November 2014. Monthly rent of $800.00 is due on the first.

The landlord had stroked out the middle portion of the 2 Month Notice and left the information fields required in that section blank. The witness said that he assisted the landlord to fill out this form to the best of their ability.

The tenants' application was filed some forty days after the filing deadline. The tenants say that they filed their application late because they did not know that they need to file it earlier.

At the hearing, I informed the parties that it was highly likely that this application would not be decided on the facts underlying the 2 Month Notice because of defects in the notice itself and the tenants' late-filed application. Rather, the decision would turn on the questions of whether the 2 Month Notice was effective pursuant to section 52 of the Act and whether the deeming provision in subsection 49(9) of the Act applied.

The parties determined that it was in their interest to enter into a negotiated end to tenancy.

Analysis

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.
During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The tenants agreed to withdraw their application.

2. The landlord agreed to withdraw the 2 Month Notice.

3. The tenants agreed to provide possession the rental unit to the landlord no later than one o'clock in the afternoon on 29 February 2016.

4. The landlord agreed to provide two months' of accommodation without rent payable in compensation to the tenants. One month of rent-free accommodation had been provided prior to this agreement. The second month of rent-free accommodation is February 2016.

5. The tenants and landlord agreed that they would not have contact with each other.

6. The landlord agreed that its agent for the purpose of this tenancy is SU. The parties agreed that contact between the tenants and SU would occur by telephone. SU's telephone contact information is provided on the covering page to this decision.

The agent DZ confirmed he had authority to bind the landlord to this agreement. The parties agreed that these particulars comprise the full and final settlement of all aspects of their disputes for both parties.

Conclusion

The tenants' application is withdrawn. The landlord's 2 Month Notice is withdrawn.

The attached order of possession is to be used by the landlord if the tenant(s) do(es) not vacate the rental premises in accordance with their agreement. The landlord is provided with this order in the above terms and the landlord should serve the tenants with this order so that the landlord may enforce it in the event that the tenant(s) do(es) not vacate the premises by the time and date set out in their agreement. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 20, 2016

Residential Tenancy Branch