



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MT

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy and for more time to make that application.

The female Tenant stated that the Tenants do not recall how or when the Application for Dispute Resolution, the Notice of Hearing, and documents submitted with the Application were served to the Landlords. The Landlords located these documents posted on their door on July 21, 2016.

On August 15, 2016 the Landlords submitted 22 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was personally served to the male Tenant on August 19, 2016. The Tenants acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Tenants be granted more time to apply to cancel a Notice to End Tenancy and, if so, should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on January 01, 2015;
- the Tenants agreed to pay rent of \$550.00 by the first day of each month;
- on June 27, 2016 the Tenants were personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property; and

- the Notice to End Tenancy declares that the Tenants must vacate the rental unit by August 31, 2016.

When the Tenants were asked why the Tenants did not dispute the Two Month Notice to End Tenancy within 15 days of receiving it, the female Tenant stated that she was not aware that the Notice had not been disputed within the legislated time period.

When the Tenants were asked if they were aware that the Notice to End Tenancy had not been disputed within the legislated time period when they filed their Application for Dispute Resolution, in which they applied for more time to dispute the Notice, the female Tenant stated that she was not aware that the Notice had not been disputed within the legislated time period. The female Tenant stated that she was not aware that the Notice had not been disputed within the legislated time period until she was advised of that fact at the hearing.

When the Tenants were asked why they did not dispute the Two Month Notice to End Tenancy within 15 days of receiving it the female Tenant stated that:

- she has a “minor case of agoraphobia”, and
- they were not aware of the legislated time period.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy, by giving proper notice, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence and the Notice to End Tenancy that was submitted in evidence, I find that the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord’s Use of Property which complies with section 52 of the *Act*.

Section 49(8) of the *Act* grants a tenant the right to dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. As the Tenants received the Two Month Notice to End Tenancy on June 27, 2016, I find that they had until July 12, 2016 to dispute the Notice to End Tenancy. The evidence shows that the Tenants filed an Application for Dispute Resolution, in which they disputed the Notice to End Tenancy, on July 15, 2016, which is more than 15 days after they received it.

Section 49(9) of the *Act* stipulates that if a tenant who has received a Two Month Notice to End Tenancy does not make an application for dispute resolution to dispute the Notice within 15 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must vacate the rental unit by that date.

As the Tenants did not dispute the Two Month Notice to End Tenancy within 15 days of receiving it I find that they are conclusively presumed to have accepted that the tenancy

ended on the effective date of the Notice and that they are obligated to vacate the rental unit on the basis of that Notice. I therefore dismiss the Tenants' application to set aside the Two Month Notice to End Tenancy that is dated June 27, 2016.

Section 55(1) of the *Act* stipulates that if a tenant applies to dispute a landlord's notice to end a tenancy, I must grant the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and I dismiss the tenant's application or uphold the landlord's notice to end tenancy. As I have dismissed the Tenants' application to set aside the Two Month Notice to End Tenancy and I have determined that Notice complies with section 52 of the *Act*, I grant the Landlords an Order of Possession for the rental unit.

During the hearing the Landlord agreed that the Tenants could remain in possession of the rental unit until October 15, 2016, providing they pay \$275.00 in rent for the period between October 01, 2016 and October 15, 2016.

Section 66(1) of the *Act* authorizes me to extend the time limit for applying to cancel 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.

I do not find that the reasons provided by the female Tenant are strong and compelling reasons for being unable to dispute the Two Month Notice to End Tenancy within 15 days of receiving it. I therefore dismiss the Tenants' application for more time to apply to set aside the Notice to End Tenancy.

In determining that the Tenants reasons for failing to apply to cancel the Notice to End Tenancy were not exceptional, I was heavily influenced by the fact that the legislated time period for disputing the Two Month Notice to End Tenancy is clearly explained on the second page of the Notice to End Tenancy. I find that failing to fully read a legal document that is served cannot be considered an exceptional reason for failing to understand timelines.

In determining that the Tenants reasons for failing to apply to cancel the Notice to End Tenancy were not exceptional, I was heavily influenced by the fact that the Two Month Notice to End Tenancy names both the male and the female Tenant. Even if I accepted that the female Tenant was unable to dispute the Notice within the legislated time period for medical reasons, the Tenants have failed to explain why the male Tenant was unable to dispute the Notice within 15 days of receiving it.

Conclusion

I grant the Landlord an Order of Possession that is effective 1:00 p.m. on October 15, 2016. This Order may be served on the Tenants, 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 *Act*.

Dated: September 08, 2016

Residential Tenancy Branch