



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNDC, MNSD, O, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for the landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for damage to the unit, site or property;
- an order to allow the landlord to keep the security deposit;
- an order for unspecified relief; and
- recovery of the filing fee for their Application from the tenants.

The landlords and the tenants appeared at the teleconference hearing and gave affirmed testimony. The landlords appeared with an advocate who also acted as a translator. During the hearing the landlords and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the landlords' application I have determined that I will not deal with all the dispute issues the landlords have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the landlords' request for an order of possession for the landlord's use of property; and to recover their filing fee. I dismiss the balance of the landlords' application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issues to be Decided

- Are the landlords entitled to an order of possession for the landlord's use of property?
- Are the landlords entitled to recovery of the filing fee for their application from the tenants?

Background and Evidence

The undisputed evidence established that the tenants entered into a one year fixed term tenancy starting August 1, 2015. Since the end of the fixed term, the tenancy has continued on a month to month basis. Rent in the amount of \$1,100.00 is due on the 1st day of each month. The tenancy agreement indicates that the landlords received a security deposit in the amount of \$550.00.

The landlords' evidence established that Landlord K.N. intends on moving into the tenants' basement unit with his wife and three children. Landlord K.N. presently resides in the upstairs rental unit with his family, along with his brother's family. The landlords testified that the upstairs rental unit is too small for both families.

The landlords' evidence established that on November 2, 2016 the landlords told Tenant C.W. that he had to move out in two months as they needed the basement for their personal use. The landlords testified that Tenant C.W. agreed to vacate the basement suite without the need for a written notice. After not issuing a Notice to end tenancy based upon the representations made by Tenant W.C., the landlord was informed by the tenant on January 10, 2017 that the tenant was not moving out.

The landlords testified that they then issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 28, 2017 (the "Two Month Notice"). The effective date in the Two Month Notice required the tenants to vacate the rental unit by January 28, 2017.

Each landlord testified that they were present when Tenant W.C. was personally served with a copy of the Two Month Notice and the Proof of Service form on January 28, 2017 at 9:00 a.m. The landlords testified that they asked the tenant to sign the Proof of Service form which the tenant refused.

The tenants did not challenge the landlords' reason for wanting to end the tenancy stated in the Two Month Notice. The tenants did not make an application to dispute the Two Month Notice. The tenants, however, opposed the landlords' application claiming that they were not served with a copy of the Two Month Notice.

Tenant W.C. acknowledged the meeting with the landlords on January 28, 2017, however, he denied being served with the Two Month Notice. Tenant W.C. testified that he was only given the two pages of the Proof of Service form and not the actual Two Month Notice. Tenant M.K. also testified that they only received the Proof of Service form and not the Two Month Notice.

The landlords testified that the tenants did not pay rent that was due for each of the months of March and April 2017.

The landlords are seeking an order of possession for the landlord's use of property. The landlords are also seeking recovery of the filing fee for their application from the tenants.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 49(3) of the *Act* permits a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find that there is sufficient evidence to satisfy me that Landlord K.N. intends in good faith to occupy the rental unit with his family. In making this finding I have taken into consideration the fact that the tenants did not challenge the landlords' reason for ending the tenancy.

Where the testimony differs between that of the landlords and the tenants regarding service of the Two Month Notice, I prefer the testimony of the landlords. I accept that the landlords served the Two Month Notice in person along with the Proof of Service form on January 28, 2017. To accept the tenants' testimony would mean that the three landlords are either fabricating their evidence or mistaken. I find that there is insufficient evidence to persuade me that the landlords have conspired to fabricate their evidence. I also find that there is insufficient evidence to satisfy me that each of the landlords are mistaken.

I find the evidence of the tenants that they were not served with the Two Month Notice less credible. I have taken into consideration the fact that the tenants did not make any inquiries or notify the landlord about the missing Two Month Notice. The landlords became aware of the tenants' claims about service of the Two Month Notice at the hearing as the tenants did not submit a response or any documentary evidence.

I find that it is more likely that the tenants are falsely claiming that they did not receive the Two Month Notice which would effectively delay the end of the tenancy. In making this finding I have taken into consideration the fact that the Tenant W.C. falsely claimed that he would move out after accepting the verbal two month notice given by the landlord. It was not until after the two months expired that the tenant then informed the landlord that they would not be moving. After reassuring the landlord that he did not need to issue a written notice, the refusal to move by Tenant W.C. effectively delayed the end of the tenancy. In determining the matter of credibility, I have taken into consideration the fact that the tenant made a previous false representation as a means to delay the end of the tenancy.

Based upon the foregoing, I find that the tenants were served with a Two Month Notice on January 28, 2017 in accordance with section 89 of the *Act*. I find that the Two Month Notice complies with section 52 of the *Act* and it is valid.

Pursuant to section 49(2)(a) and (b) of the *Act*, to end a month to month tenancy, the landlord must give notice to end the tenancy effective on a date that must be:

- (a) not earlier than 2 months after the date the tenant receives the notice, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement,

Pursuant to section 49(8) of the *Act*, a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Pursuant to section 49(9) of the *Act*, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with section 49(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.

As the tenants were served with a copy of the Two Month Notice on January 28, 2017 and rent is due on the first day of each month, I find that the earliest effective date permitted under sections 49(2)(a) and (b) of the *Act*, is March 31, 2017. The effective date stated in the Two Month Notice is January 28, 2017.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the Two Month Notice is March 31, 2017, and not January 28, 2017.

I find that the tenants did not make an application for dispute resolution in accordance with section 49(8) of the *Act* within 15 days after the tenants received the Two Month Notice.

Based on the foregoing, I find that the tenants are conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Two Month Notice, March 31, 2017. Accordingly, I find that the landlords are entitled to an order of possession.

As the landlords' application is successful, I find the landlords are entitled to a monetary order in the amount of \$100.00 for the filing fee for their application from the tenants. Pursuant to section 72 of the *Act*, I authorize the landlords to apply the tenants' security deposit in the amount of

\$550.00 against the amount owed by the tenants. Accordingly, the landlords are entitled to retain \$100.00 from the tenants' security deposit being held by the landlords.

Conclusion

The landlords' application for an order of possession and recovery of the filing fee is successful. The balance of the landlords' claims are dismissed with leave to reapply as they have been severed.

The landlords are awarded \$100.00 for the filing fee for their application from the tenants. The landlords are authorized to retain \$100.00 from the tenants' security deposit being held by the landlords as payment for the amount owed by the tenants.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective two days after service of this Order upon the tenants. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 28, 2017

Residential Tenancy Branch