



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNQ, CNR, OLC, ERP

Introduction

This hearing dealt with the tenant's 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 Because the Tenant does not Qualify for Subsidized Rental Unit pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant does not Qualify for Subsidized Rental Unit pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and 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.

In reviewing the tenant's application, it was apparent that the tenant had misidentified the landlord's 2 Month Notice for Landlord's Use of Property (the 2 Month Notice) as a 2 Month Notice to End Tenancy Because the Tenants does not Qualify for Subsidized Rental Unit. Since this was not now nor never had been a subsidized rental unit, and the landlord agreed that the 2 Month Notice they issued was for Landlord's Use of Property, the parties agreed to amend the tenant's application to read that it was application to cancel the 2 Month Notice for Landlord's Use of Property. In accordance with the provisions of the *Act* and with the agreement of the parties, I hereby amend the

tenant's applications for more time to cancel the 2 Month Notice and to cancel the 2 Month Notice.

The landlord provided sworn testimony and written evidence that they sent the tenant a 2 Month Notice by registered mail on December 8, 2017. The tenant confirmed receiving the landlord's 2 Month Notice by registered mail on December 13 or 14, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on December 14, 2017.

As the tenant confirmed that he was handed the 10 Day Notice by the landlord on February 5, 2018, I find that the tenant was duly served with this Notice on that date in accordance with section 88 of the *Act*.

The tenant testified that he sent the landlord a copy of the dispute resolution hearing package and written evidence by registered mail on February 7, 2018. The landlord confirmed that she received this package, but not until the week before this hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's dispute resolution hearing package on February 12, 2018, five days after its registered mailing. The landlord testified that she sent the tenant a copy of her written evidence shortly after learning of this hearing from the Residential Tenancy Branch. Although the tenant said that he did not receive the landlord's written evidence until the night before this hearing, he confirmed that he had reviewed that evidence. While the parties have not exchanged written evidence as promptly as would normally be required, I accept that the late evidence supplied to one another was sufficiently served in accordance with section 71 of the *Act* to enable me to consider their written evidence. I also note that most of the written evidence dealt with issues that were different than the essential questions relating to the two Notices to End Tenancy, and there was little dispute between the parties regarding the sworn testimony of the parties relating the two Notices.

Issues(s) to be Decided

Should an extension of time be granted to the tenant to apply to cancel the landlord's 2 Month Notice? Should the landlord's 10 Day and 2 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This month-to-month tenancy began on November 30, 2016. According to the terms of the written residential tenancy agreement signed by the tenant on June 30, 2017, monthly rent is set at \$875.00, payable in advance on the 28th of each month. The tenant is also responsible for heat and hydro. At the hearing, both parties confirmed that the written copy of the tenancy agreement submitted by the tenant was incorrect as to the due date for the payment of monthly rent. Both parties confirmed that rent was payable in advance on the first of each month. The landlord testified that until February 2018, the tenant had always paid rent on time and in full.

The tenant did not dispute the landlord's claim that a total of \$450.00 was paid by the tenant as a security deposit and pet damage deposit.

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reason for seeking an end to this tenancy:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant...*

In that Notice, the landlord also indicated that the renovations were designed to create a third bedroom in this rental home.

The tenant did not apply to cancel the landlord's 2 Month Notice until February 5, 2018, well after the 15-day time period for doing so. The tenant explained that he needed more time to apply to cancel that Notice because another home was being constructed where he was planning to move to when this tenancy ends.

The tenant confirmed the landlord's allegation that the tenant had not paid any rent for February or March 2018, although he remained willing to do so.

Analysis

Section 66(1) of the *Act* authorizes me to extend a time limit established under this *Act* only in exceptional circumstances. I find that the tenant's explanation as to why they did not file an application to cancel the 2 Month Notice until February 5, 2018, well after the expiration of the 15-day time period for doing so, does not qualify as exceptional circumstances. I dismiss the tenant's application to obtain more time to file an application to cancel the landlord's 2 Month Notice.

Section 55(1) of the *Act* reads as follows:

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 to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's 2 Month Notice does comply with the requirements of section 55(1) and 52 of the *Act* with respect to form and content.

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days leads to the end of this tenancy on March 31, 2018, the effective date of the 2 Month Notice, and requires them to vacate the rental premises by 1:00 p.m. on that date.

Section 51 of the *Act* reads in part as follows;

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord...

In this case, the tenant withheld paying rent that was due on February 1, 2018, and has subsequently failed to pay rent that became due on March 1, 2018. Since the landlord's 2 Month Notice identified March 31, 2018 as the end date for this tenancy, I find that the tenant's withholding of rent was not for the last month's rent for this tenancy as set out in section 51(1.1) of the *Act*. As such, and as the tenant has not paid rent since the landlord issued the 10 Day Notice, I find that the landlord is also entitled to end this

tenancy on the basis of the 10 Day Notice. However, as was noted at the hearing, the landlord failed to identify an effective date in the 10 Day Notice. As such and as section 55(1) and 52 of the *Act* require that a notice to end tenancy must comply with the requirements as to form and content, I can only assume that the March 31, 2018 date identified in the landlord's 2 Month Notice was the date that the landlord was seeking to end this tenancy in the 10 Day Notice as well as the 2 Month Notice.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy is ending soon, there is no need to consider the other aspects of the tenant's application.

Conclusion

The tenant's applications for more time to apply to cancel the 2 Month Notice, and to cancel the 10 Day and 2 Month Notices are dismissed without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on March 31, 2018. 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. The remainder of the tenant's application is also dismissed as consideration of these matters was contingent upon this tenancy continuing.

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: March 05, 2018

Residential Tenancy Branch