



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, OLC, LRE

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 18, 2018 (the "Two Month Notice"), pursuant to section 66;
- cancellation of the landlord's Two Month Notice pursuant to section 49;
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62; and
- an Order that the landlord's right to enter is suspended or restricted pursuant to section 70.

The tenants and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's lawyer confirmed that he had authority to speak on behalf of the landlord as agent at this hearing.

Tenant J.J. testified that she served the landlord the notice of dispute resolution package by registered mail sometime in May 2018. The tenants did not provide the Canada Post Tracking Number to confirm this registered mailing. The landlord's lawyer confirmed receipt of the dispute resolution package. I find that the landlord was served with this package in accordance with sections 89 and 90 of the *Act*.

During the hearing the tenants withdrew their applications for:

- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62; and
- an Order that the landlord's right to enter is suspended or restricted pursuant to section 70.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Service of Evidence Packages

Section 3.11 of the Rules of Procedure (the “*Rules*”) state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving his/her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

Tenant J.J. testified that she served the landlord with an additional evidence package via registered mail on Friday, May 25, 2018, two days before this hearing. The landlord’s lawyer testified that the landlord has not yet received the evidence package. I find that since the landlord has not yet received the evidence package and is not deemed served with the package pursuant to section 90 of the *Act* until May 31, 2018, that the evidence package is inadmissible because the landlord has not been informed of the case made against him or had an opportunity to reply to the evidence pursuant to the principles of natural justice.

The landlord’s lawyer testified that the landlord posted an evidence package on the tenants’ door on May 25, 2018. Tenant J.J. testified that the tenants received the package on May 25, 2018 and had time to review and respond to the material contained therein. I find that while the evidence package was served on the tenants late, pursuant to section 3 of the *Rules* and the principles of natural justice, I find that the tenants were not prejudiced by late submission of evidence as they had time to review and respond to the materials. I admit for consideration the landlord’s evidence served on the tenants on May 25, 2018.

Issue(s) to be Decided

1. Are the tenants entitled to more time to cancel the Two Month Notice pursuant to section 66 of the *Act*?
2. Are the tenants entitled to cancel the Two Month Notice pursuant to section 49 of the *Act*?
3. Is the landlord entitled to an Order of possession pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy is currently ongoing and monthly rent in the amount of \$650.00 is payable on the first day of each month. In January 2018 the landlord discussed with the tenants the need to renovate the unit and stated that he wanted the tenants to move out at the end of March 2018. Between March 15th and March 24th, 2018, the landlord served the Two Month Notice on the tenants by hand delivering it to their son, at the rental unit in question. The son gave the Two Month Notice to the tenants shortly thereafter, the tenants could not provide the specific date the Two Month Notice was received.

Both parties agree on the following facts. The landlord did not fill in the Two Month Notice correctly and back dated the date signed to January 18, 2018, the day he first spoke to the tenants about moving out for renovations. The landlord actually signed the Two Month Notice between March 15th and March 24th, 2018. The Two Month Notice states that it was served on February 15, 2018 but this is incorrect, it was served between March 15th and March 24th, 2018. The Two Month Notice has a stated effective date of March 31, 2018 and states the reason for this Two Month Notice is that 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.

The landlord's lawyer testified that the landlord's copy of the Two Month Notice had the tenants' names filled in. This version of the Two Month Notice was submitted into evidence.

The tenants testified that the Two Month Notice did not have their names on it but did have their rental address. This version was submitted into evidence. The tenants testified that since the dates on the Two Month Notice were all wrong, that they did not know when they were supposed to move out and so would like to cancel the Two Month Notice. The tenants also testified that they have looked for other accommodation but have not been able to find anything in their price range.

The tenants testified that they filed for dispute resolution on May 3, 2018 and did not do so sooner because tenant D.S. has been sick and tenant J.J. has been looking after him. Tenant D.S. testified that he has cancer and underwent surgery on May 11, 2018 and subsequently developed an infection and was in the hospital for several weeks thereafter. The tenants did not provide any physical documentation from a hospital or other medical facility.

Analysis

I find that, as both parties agree that the Two Month Notice was served on the tenants between March 15 and March 24, 2018, that the Two Month Notice was served on the tenants on March 24, 2018. I find that service was effected on the last day of the date range agreed upon as that provides the least prejudice to the tenants for their application response time.

While the Two Month Notice was not served in accordance with section 88 or 89 of the *Act*, I find that since the tenants received the Two Month Notice without significant delay, the Two Month Notice has been sufficiently served for the purposes of this *Act* pursuant to section 71 of the *Act*.

Upon reviewing the Two Month Notices submitted by the landlord and the tenants, I have concluded that they are identical, except that in the copy submitted by the landlord, the names of the tenants are filled in. I find that it is more likely that the landlord filled in the names of the tenants after the copy was served on the tenants than that the tenants erased their names from the Two Month Notice.

Section 52 of the *Act* states that in order for a Two Month Notice to be effective, it must: be in writing, be in the approved form, and be signed and **dated** by the landlord giving the notice. In this case, the landlord failed to properly fill out the Two Month Notice. I find that on the Two Month Notice, the landlord purposefully and willfully falsified the date the it was signed and the date it was served, in an attempt to circumvent the notice requirements set out in section 49 of the *Act*. Based on the above, I find that the Two Month Notice is invalid and of no force or effect.

While I note that section 10 of the *Act* allows me to approve deviations from an approved form, I find that the deviations in this case significantly affect the substance of the Two Month Notice and are intended to mislead/subvert section 49 of the *Act*. I therefore decline to approve the deviations.

Since the Two Month Notice is of no force or effect the landlord is not entitled to an Order of possession and I do not need to consider the tenant's application for more time to cancel the Two Month Notice.

Conclusion

I find that the Two Month Notice is invalid and of no force or effect.

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: June 07, 2018

Residential Tenancy Branch