



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNL, FFT

Introduction

The tenant applied under the *Residential Tenancy Act* (“*Act*”) for more time to make an application to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”), to cancel the 2 Month Notice, and to recover the cost of the filing fee.

The tenant and landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained to the parties, the parties were affirmed, and were provided the opportunity to ask questions. The parties were also provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

There were no service issues raised regarding documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed that a written tenancy agreement did not exist between the parties and was verbal in nature only. The landlord affirmed that the second respondent ZH was not a landlord and as a result, ZH was removed as a respondent pursuant to section 64(3) of the *Act*.

The tenant provided their email address at the outset of the hearing. The landlord affirmed that she did not have an email address to provide and would prefer the decision sent by regular mail. The parties were advised that the tenant would receive the decision by email and the landlord would receive the decision by regular mail.

Issues to be Decided

- Should the tenant be granted more time to dispute the 2 Month Notice?
- If yes, should the 2 Month be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a verbal tenancy began on June 1, 2014. The parties agreed that the 2 Month Notice dated April 17, 2018 contained an inadvertent error on the part of the landlord that both parties understood to be dated March 17, 2018 versus what was listed as April 17, 2018. The tenant confirmed that he was served on March 17^h or 18th of 2018 and stated his appreciation to the landlord during the hearing for her giving him an extra month as the landlord gave an extra month onto the 2 Month Notice as a benefit to the tenant. The parties also agreed that the effective vacancy date listed on the 2 Month Notice was May 31, 2018 which has passed.

The tenant and landlord both agreed that money for June 2018 use and occupancy has not been paid by the tenant to the landlord. The tenant affirmed that the reason he was disputing the 2 Month Notice was to have more time to find a new rental unit. The tenant also stated that he applied to dispute the 2 Month Notice as the date listed on the 2 Month Notice was April 17, 2018 so he thought the landlord was bound. In other words, the tenant made the argument that the landlord was bound by that date due to the error that both parties agreed earlier in the hearing should have read March 17, 2018 and will be addressed later in this decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Request for more time to make an application to cancel the 2 Month Notice – Section 66 of the *Act* applies and states that a time limit may be extended for exceptional circumstances. I find the reason stated by the tenant as needing more time to find a new rental unit insufficient and does not constitute an exceptional circumstance under the *Act*. I will now address the inadvertent error listed on the 2 Month Notice. Firstly, both parties affirmed during the hearing that they both realized in March 2018 when the 2 Month Notice was issued on or about March 18, 2018 and dated March 17, 2018 that the landlord was giving the tenant an extra month to vacate the rental unit as a benefit to the tenant. The tenant went so far as to thank the landlord for giving him the extra month in March and admitted that he knew the 2 Month Notice was supposed to be dated March 17, 2018.

Section 68 of the *Act* also applies and states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

- (b) in the circumstances, it is reasonable to amend the notice.
- (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.

[My emphasis added]

Based on the above, I **dismiss** the tenant's request for more time to make an application to cancel the 2 Month Notice as I find the tenant had 15 days from March 18, 2018 when there is no dispute that the tenant had received the 2 Month Notice and did not file his application until April 30, 2018.

I do not find it necessary to consider the reason stated in the 2 Month Notice as 49(a) of the *Act* states that for the reason indicated in the 2 Month Notice before me, that if the tenant does not dispute the 2 Month Notice within 15 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 2 Month Notice which in the matter before me was May 31, 2018. Therefore, I **dismiss** the tenant's entire application without leave to reapply, due to insufficient evidence and I uphold the 2 Month Notice which I find complies with section 52 of the *Act* and is valid.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

- 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.**

[My emphasis added]

Given the above and taking into account that I have reviewed the 2 Month Notice and find that it complies with section 52 of the *Act*, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenant as the effective vacancy date of May 31, 2018 has already

passed and the parties confirmed that the tenant has not paid for use and occupancy for June 2018.

As the tenant's application did not have merit, I do not grant the tenant the recovery of the cost of the filing fee.

The landlord is cautioned to ensure that all future tenancy agreements are in writing in accordance with section 13 of the *Act*.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply.

The 2 Month Notice issued by the landlord is upheld. I have amended the 2 Month Notice and find the tenancy ended on May 31, 2018.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2018

Residential Tenancy Branch