



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT MT OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on October 1, 2018. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenants' amendment on September 13, 2018.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property
- More time to make an application to cancel the Notice to End Tenancy.

Issues to be Decided

- Should the Tenants be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenants have applied for more time to make an application to cancel the Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenants stated that they received the Notice on August 10, 2018. The Landlord also provided a copy of this Notice into evidence, which lists the following ground for ending the tenancy:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Section 49 of the *Act* states that 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. As the Tenants received the Notice on August 10, 2018, they had until August 25, 2018, to dispute the Notice.

After reviewing the file, I note that the Tenants' application was not made until they filed their amendment with the Residential Tenancy Branch on September 7, 2018, seeking to cancel the Notice to End Tenancy they received. In this case, the Tenants did not apply within the allowable 15 day window, which lapsed on August 25, 2018. The Tenants were significantly over the allowable time frame to dispute the Notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

I note that the Tenants expressed that they wanted more time to file this application. However, during the hearing when I asked them to explain why they required more time to file the application, they did not specifically speak to this issue. It is not clear why the Tenants were unable to apply within the normal time period, or why their circumstances were exceptional, such that it warrants extra time to file an application for review.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective at 1:00 P.M. on October 31, 2018.

Since the Tenants were not successful with their application, I decline to award them recovery of the filing fee.

Conclusion

The Tenants' request for more time to make an application to cancel the Notice is dismissed. Further, the Tenants' application to cancel the Notice is also dismissed.

The landlord is granted an order of possession effective **October 31, 2018, at 1pm**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: October 2, 2018

Residential Tenancy Branch