



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the landlords: OPL, MNDCLS, FFL
For the tenant: CNL, MT, LRE, FFT

Introduction

The parties both submitted Applications for Dispute Resolution (“applications”) for remedy under the *Residential Tenancy Act* (“Act”). The landlords applied to for an order of possession based on a 2 Month Notice To End Tenancy For Landlord’s Use of Property dated May 26, 2018 (“2 Month Notice”), for a monetary claim of \$7,599.36 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee. The tenant applied to cancel the 2 Month Notice, for more time to make an application to cancel a 2 Month Notice, for an order to suspend or set limits on the landlords’ right to enter the rental unit, site or property, and to recover the cost of the filing fee.

The tenant, a tenant support person (“tenant support”), the landlords, a landlords’ support person (“landlords’ support”) and a property manager for the landlords (“property manager”) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony and to make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in the applications before me. In this circumstance the landlords have applied for a monetary claim even though they are also seeking an order of possession and the tenant continues to occupy the rental unit and the most urgent issue before me is the landlords’ application for an order of possession. I find that not all the claims on the applications before me are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants’ request to set aside the 2 Month Notice and the landlords’ claim for an order of possession at this proceeding. I note that the landlords failed to claim for unpaid rent or utilities and instead are seeking compensation under the Act which I find is not relevant to the

order of possession request before me. Therefore, the balance of the applications are dismissed, **with leave to re-apply**.

Issues to be Decided

- Should the 2 Month Notice be cancelled or upheld under the *Act*?
- If the 2 Month Notice is upheld, are the landlords entitled to an order of possession under the *Act*?
- If the 2 Month Notice is cancelled, should the tenancy be ordered to continue under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2016. Originally monthly rent of \$1,550.00 was due on the first day of each month and was increased during the tenancy to the currently monthly amount of \$1,650.00 per month. The tenant paid a security deposit of \$775.00 at the start of the tenancy which the landlords continue to hold.

The tenant's support testified that the 2 Month Notice was received on May 26, 2018 by the daughter of the tenant. The tenant disputed the 2 Month Notice on July 26, 2018 which is not within the allowable time limitation under the *Act* of 15 days. Page two of the 2 Month Notice indicates the reason as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

Regarding the tenant's request for more time to make an application to dispute the 2 Month Notice, the tenant's support testified that the tenant was out of country about five months ago and only arrived back in the country the day before the hearing. The tenant and the tenant's support failed to submit any supporting documentary evidence such as a plane ticket. In addition, the tenant changed his testimony several times by first stating he left the country five months ago, then said March and then said October of 2017.

Later in the hearing, the tenant support then stated that the tenant was in hospital in Iran and confirmed that no supporting documentary evidence was submitted for consideration such as a hospital letter or hospital bracelet.

The tenant continues to occupy the rental unit. The effective date listed on the 2 Month Notice was July 31, 2018 which has passed. The parties agreed that money for use and occupancy was received by the landlords from the tenant for the month of September 2018.

Analysis

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

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice on July 26, 2018. Section 49(8)(a) of the *Act* states that the timeline to dispute a 2 Month Notice is within 15 days after the date the tenant receives the 2 Month Notice. In the matter before, the tenant support confirmed that the tenant's daughter received the 2 Month Notice on May 26, 2018 which was posted to the tenant's door. There was no evidence to support that the tenant's daughter is a minor.

As a result, I find the tenant failed to dispute the 2 Month Notice within 15 days of May 26, 2018. Therefore, I will now consider the tenant's application for more time to make an application to dispute 2 Month Notice. Section 66 of the *Act* applies and states that a time limit may be extended for **exceptional circumstances**. I find the tenant has failed to provide any supporting documentary evidence such as a plane ticket to support that the tenant was out of the country. In addition, even if the tenant was out of the country the tenant failed to provide sufficient evidence that the tenant could not have contacted his son or daughter or another agent to file an application on his behalf to dispute the 2 Month Notice. Furthermore, I find the tenant also provided insufficient evidence to support that he was in the hospital in Iran and that the tenant has had since July 26, 2018 to obtain that supporting evidence and submit it into evidence in support of their application which the tenant failed to do.

Based on the above, I find the tenant has provided insufficient evidence to support an exceptional circumstance under the *Act*. Therefore, I dismiss the tenant's application for more time to make an application to dispute the 2 Month Notice.

Given the above, section 49(9) of the *Act* applies and states:

(9) If a tenant who has received a notice under this section **does not make an application for dispute resolution in accordance with subsection (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.

[My emphasis added]

Therefore, I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the 2 Month Notice issued by the landlords as I find it is valid and was not disputed in time and that the

tenant is conclusively presumed to have accepted that the tenant accepted the July 31, 2018 effective vacancy date yet has not vacated the rental unit. Therefore, I find the tenancy ended on July 31, 2018.

As the tenant continues to occupy the rental unit, 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 it complies with section 52 of the *Act*, I must grant the landlords an order of possession. I have taken into account that money for use and occupancy has been received by the landlords for September 2018 and as a result, I grant the landlords an order of possession effective **September 30, 2018 at 1:00 p.m.**

As the landlords' application was successful, I grant the landlords **\$100.00** pursuant to section 72 of the *Act*. I authorize the landlords to retain \$100.00 from the tenant's \$775.00 security deposit in full satisfaction of the recovery of the cost of the filing fee. Therefore, I find that effective immediately the tenant's new security deposit balance is \$675.00.

The tenant's application for the recovery of the cost of the filing fee is dismissed.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply due to insufficient evidence. The 2 Month Notice issued by the landlords is upheld.

The landlords have been granted an order of possession effective September 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on July 31, 2018. The tenant is not granted the filing fee as their application is without merit.

I authorize the landlords to retain \$100.00 from the tenant's \$775.00 security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's new security deposit balance is \$675.00.

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: September 19, 2018

Residential Tenancy Branch