



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHEELER CHEAM REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MT, FFT

Introduction

On October 10, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On October 12, 2018, the Tenant attempted to amend his Application to remove Tenant T.S., as she was a tenant that lived in a separate unit and it was their intention to dispute the notice she received on this Application. As T.S. was not a party to this dispute, she exited from the conference call at 9:35 AM and the Tenant's Application was amended to remove her from the Application.

The Tenant attended the hearing and R.F. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that he served the Landlord the Notice of Hearing package by hand on October 12, 2018 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that he did not serve his evidence to the Landlord. As such, it was not considered when rendering this decision; however, the Tenant was allowed to speak to this evidence during the hearing. The Landlord stated that he served the Tenant his evidence by registered mail on November 13, 2018 and the Tenant confirmed that he received the package around November 18, 2018. However, he did not have time to review this evidence and prepare a response. As service of this evidence did not

comply with Rule 3.15 of the Rules of Procedure, this evidence was not considered; however, the Landlord was allowed to speak to this evidence during the hearing.

The Tenant's Application included a request for more time to make the Application. However, the Tenant made the Application within the statutory timeframes pursuant to Section 49 of the *Act*. As such, this request was not necessary.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on April 1, 2014 on a month to month basis. Rent was currently established at \$810.00 per month, due on the first day of each month. A security deposit of \$375.00 was paid.

Both parties agreed that the Notice was served by hand on September 26, 2018. The reason the Landlord served the Notice is because "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)." The Tenant advised that he received the Notice and subsequently made his Application to cancel the Notice. The effective date of the Notice was November 30, 2018.

In addition, contrary to Section 52 of the *Act*, the Notice indicated an incorrect dispute address. However, the Tenant acknowledged that he was aware that this Notice pertained to his rental unit and he was prepared to proceed with the hearing.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties, and the Landlord and the Tenant agreed as follows:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property of September 26, 2018 is accepted by the Tenant.
2. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit, but must vacate the rental unit by **December 3, 2018 at 1:00 PM**.
3. The Landlord must **not** charge the Tenant rent for December 2018.
4. The Tenant must remove the greenhouse by December 10, 2018.

This agreement is fully binding on the parties and is in full and final satisfaction of this Application.

If condition two is not satisfactorily complied with, the Landlord is granted an Order of Possession effective at **1:00 PM on December 3, 2018 after service of this Order** on the Tenant.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use Property of September 26, 2018 to be upheld.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenant if necessary, effective at **1:00 PM on December 3, 2018**. This Order must be served on the Tenant. If the Tenant fails 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: November 20, 2018

Residential Tenancy Branch