



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RDA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), and for more time in which to dispute the Two Month Notice.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant. The parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenant, along with a copy of his evidence. The Tenant also confirmed receipt of the Landlord’s evidence package. I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the Tenant be granted more time to dispute the Two Month Notice to End Tenancy for Landlord’s Use of Property?

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2012. However, the parties were not in agreement as to the monthly rent amount. The Tenant stated that he paid a security deposit of \$400.00 at the outset of the tenancy and although rent started at \$800.00 per month, it was now \$1,200.00 per month.

The Landlord stated that they have received monthly rent payments in various amounts and are unsure if the Tenant has been paying \$1,200.00 per month. The Landlord stated that the Tenant still pays their father on occasion, despite them advising the Tenant to pay themselves as representatives of Landlord due to the current health condition of their father.

The Landlord were unsure if the Tenant had paid any money towards rent for December 2018, but the Tenant stated that he had not paid for December 2018.

On September 28, 2018 the Landlord sent the Tenant a Two Month Notice by email. The Tenant confirmed receipt of the Two Month Notice on September 28, 2018 and initialled the notice confirming that he is entitled to one month of rent compensation.

The Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The effective end of tenancy date of the Two Month Notice was stated as December 1, 2018. The Two Month Notice included the names of the purchasers.

The Landlord submitted an email statement from the purchasers stating that they had intended to move in to the home on December 3, 2018. As the Tenant did not move out of the home by the effective end of tenancy date of the Two Month Notice, the purchasers have been residing in a trailer on a relative's property.

The Landlord also submitted the Contract of Purchase and Sale documents into evidence, as well as a written submission outlining the events that led to the issuance of the Two Month Notice.

The Tenant applied to dispute the Two Month Notice on October 30, 2018 after he was unable to secure new living accommodations. He stated that he applied late as he had been unable to find a new place to move. The Tenant also noted that he is recovering from an accident. The Tenant submitted a one-page written submission into evidence outlining his account of events that led to his dispute of the Two Month Notice.

The Landlord provided testimony that they had begun talking to the Tenant about possibly selling the home beginning in March 2018. They listed the home in September 2018 and advised the Tenant of any showings, open houses and offers.

Analysis

The Two Month Notice was issued under Section 49(5) of the *Act* and served to the Tenant by email. While email is not a method of service under Section 88 of the *Act*, as the Tenant confirmed receipt of the Two Month Notice on September 28, 2018, I find that the Two Month Notice was sufficiently served on September 28, 2018 pursuant to Section 71(2) of the *Act*.

In accordance with Section 49(8)(a) a tenant has 15 days in which to dispute a notice given under Section 49(5). The Tenant applied to dispute the notice on October 30, 2018, which is outside of the 15 days provided for under the *Act*.

However, the Tenant applied for more time in which to dispute the One Month Notice. Section 66 of the *Act* states that a time limit under the *Act* may be extended in exceptional circumstances.

The Tenant provided testimony that he applied late due to difficulty in finding a new rental unit. In his written submission the Tenant also referenced anxiety and stress in finding a new place to live. However, I do not find sufficient evidence before me to establish that there are *exceptional circumstances* which led to the Tenant filing an Application for Dispute Resolution beyond the 15 days allowable under the *Act*.

As I do not find sufficient evidence to grant an extension to the timeline in which to dispute a One Month Notice, instead I find that Section 49(9) of the *Act* applies as stated:

(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.

As Section 49(9) applies, the Tenant is conclusively presumed to have accepted the end of tenancy and must vacate the rental unit. Therefore, I dismiss the Tenant's application to cancel the Two Month Notice. As the Two Month Notice is found to be in compliance with Section 52 of the *Act*, pursuant to Section 55(1), I grant the Landlord a two-day Order of Possession.

The parties are also reminded that pursuant to Section 51 of the *Act*, a tenant who receives a Two Month Notice is entitled to one month of rent compensation.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 10, 2018

Residential Tenancy Branch