



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNL, ERP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to request more time to file to dispute the Notice, to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) dated September 17, 2018 and to request on order for the Landlord to make emergency repairs the rental unit. The matter was set for a conference call.

The Landlord, one of the Tenants and the Tenant’s Representative (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. All parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

### Preliminary Matter

I have reviewed the Tenants’ application, and I note that they have applied to cancel a Notice to end tenancy as well as for several other issues. I find that one of these other issues is not related to the Tenants’ request to cancel the Notice. As that matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I am dismissing with leave to reapply, the Tenants' claim for an order for the Landlord to make emergency repairs to the rental unit.

I will proceed with this hearing on the Tenants' claims for more time to file an application to dispute a Notice and to cancel the Notice.

#### Issues to be Decided

- Are the Tenants entitled to additional time to file their application to dispute the Notice?
- Should the Notice dated September 17, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

#### Background and Evidence

The Landlord testified that a Notice to end tenancy was served on the Tenants on September 17, 2018, by posting it to the front door of the rental unit. The Notice indicated that the Tenants were required to vacate the rental unit by November 30, 2018. The Tenants provided a copy of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- *All of the conditions for 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 close family member intends in good faith to occupy the rental unit.*

The Landlord testified that he has sold the property and that the purchaser has requested that the tenancy is ended so they can move in. The Landlord provided a copy of the contract for purchase and sale and a copy of the written request from the purchaser to end the tenancy into documentary evidence.

The Tenants testified that they believe the notice should have been the four-month notice for renovation or demolition as they believe the purchaser intends to demolish the rental unit.

The Tenants also testified that they need more time to move as it was winter and finding a place to live in their area was difficult.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenants have requested more time to file their dispute of the Notice - pursuant to section 66 of the *Act*. The Act allows for an extension of time; however, that extension may only be granted if the party requesting the extension has proof that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

#### **Director's orders: changing time limits**

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

In this case, the Tenants submitted no evidence or provided any testimony as to why they required additional time to file their application to dispute the Notice. I find that the Tenants have not provided sufficient evidence to satisfy me that there was an exceptional circumstance that required additional time to file their dispute. Therefore, I dismiss the Tenant's application to be allowed additional time to file to dispute the Notice.

I accept the verbal testimony of the Landlord that he served the Notice by posting it to the Tenants' door on September 17, 2018. Pursuant to section 90 of the *Act*, I find that the Tenants are deemed to have received the Landlord Notice to end the tenancy on September 20, 2018.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice.

#### **Landlord's notice: landlord's use of property**

**49** (8) A tenant may dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
  - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
- (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.

Accordingly, I find that the Tenants had until October 5, 2018, to dispute the Notice. I have reviewed the Tenants application and, I find that the Tenants failed to dispute the Notice on October 26, 2018, outside of the statutory timeline. I find that the Tenants did not dispute the Notice, as required, and that the time for doing had expired.

Therefore, I find that the Tenants are conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice. I find the Notice issued on September 17, 2018, is valid and enforceable.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

#### **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.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of this Order upon the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenants.

### Conclusion

I dismiss the Tenants' application for more time to file to dispute the Notice.

I dismiss the Tenants' application to cancel the Notice Dated September 17, 2018.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenants. The Tenants must be served with this Order. Should the Tenants 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 4, 2018

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Residential Tenancy Branch