



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 6, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 24, 2018 (the "Two Month Notice");
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified the Application package and documentary evidence were served on the Landlord by registered mail. The Landlord acknowledged receipt. In addition, the Landlord testified the Tenants were served with documentary evidence by registered mail. During the hearing, neither party raised any issue with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and make submissions. 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 are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss the Tenants' request for a monetary order, with leave to reapply.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on April 15, 2018, and was expected to continue to November 30, 2018, at which time the Tenants agreed to vacate the rental unit. Rent in the amount of \$1,500.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$750.00, which the Landlord holds.

The Landlord wishes to end the tenancy. The Landlord testified that he and his spouse will be returning to live in the rental property. The Landlord stated he will be returning to British Columbia on December 18, 2018. Accordingly, the Landlord issued the Two Month Notice, which was served on the Tenants by mail on October 24, 2018. The Application confirms receipt of the Two Month Notice on October 26, 2018. The Two Month Notice has an effective day of December 31, 2018.

In reply, the Tenants did not dispute the reasons provided by the Landlord for wishing to end the tenancy. However, the Tenants testified they understood the tenancy could continue on a long-term basis. They testified they would not have incurred the cost to move into the rental unit if the tenancy was only to continue for such a short period.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for landlord's use of property in the circumstances described therein. In this case, the Landlord issued the Two Month Notice on the basis that he and his spouse will be returning to British Columbia to live in the rental unit. The Tenants did not dispute the Landlord's reasons for issuing the Two Month Notice. Accordingly, I find there is insufficient evidence the Landlord does not intend to do what is indicated in the Two Month Notice. This is supported by the tenancy agreement which clearly indicates the tenancy was to be for a fixed term, ending November 30, 2018. There is insufficient evidence before me to conclude the parties had an agreement that the tenancy would continue on a long-term basis. As a result, I find that the Application to cancel the Two Month Notice is dismissed.

For the information of the parties, changes to residential tenancy legislation that have been in effect since December 11, 2017, confirm vacate clauses are not effective to end a tenancy. Rather, fixed-term tenancy agreements that contain vacate clauses are deemed to convert to a month-to-month tenancy at the end of the fixed term. Therefore, the vacate clause in this instance was not effective to end the tenancy. However, it has been relied upon as evidence of the understanding between the parties.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective on December 31, 2018, at 1:00 p.m.

Conclusion

Subject to my finding under Preliminary and Procedural Matters, above, I find that the Tenants' Application is dismissed.

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on December 31, 2018, at 1:00 p.m. The order of possession may be filed in 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 14, 2018

Residential Tenancy Branch