



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, FFT

Introduction

On January 4, 2019, the Tenants 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 to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. D.Z. and S.J attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by registered mail to the Landlord and the Landlord confirmed that this package was received. Based on this undisputed testimony, 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 served his evidence to the Landlord by registered mail on January 16, 2019 and the Landlord confirmed receiving this. The Landlord advised that he served his evidence to the Tenant by registered mail on January 24, 2019 and the Tenant confirmed receiving this. As all evidence was served in accordance with the time frame requirements of Rules 3.14 and 3.15 of the Rules of Procedure, all evidence was accepted and considered in this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral 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

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to be granted more time to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

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 March 1, 2016. Rent was currently established at an amount of \$1,218.00 per month, due on the first day of each month. A security deposit of \$587.50 was paid.

The Landlord stated that the Notice was served to the Tenants by registered mail on December 14, 2018 (the registered mail tracking number is on the first page of this decision). The reason the Landlord served the Notice is because the “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 Notice indicated that the effective end date of the Notice was March 1, 2019.

The Tenant advised that he had been travelling when the Notice was mailed, and he submitted proof of his travel itinerary. However, he acknowledged that he arrived back home on December 31, 2018 and that he had forgotten to check the mail until January 3, 2019. He acknowledged receiving the Notice on January 3, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on December 14, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on December 14, 2018 by registered mail. As per Section 90 of the *Act*, the Notice would have been deemed received after 5 days of being mailed. According to Section 49(8) of the *Act*, the Tenants have 15 days to dispute this Notice, and Section 49(9) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."* I find it important to note that this information is provided on the first page of the Notice as well.

The Tenant received the Notice on January 3, 2019 and they must have made this Application by this day at the latest. However, the undisputed evidence is that the Tenants made their Application on January 4, 2019. As the Tenants were late in making this Application, they requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice "only in exceptional circumstances." Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. As the Tenants did not dispute the Notice on time and the only reason it was not done so is because the Tenant forgot to check the mail, I find that there was insufficient evidence that the Tenants had significant issues or exceptional circumstances that prevented them from disputing the Notice on time. Ultimately, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the

Act, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Ultimately, I dismiss the Tenants' Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession that is effective at **1:00 PM on March 1, 2019 after service of this Order** on the Tenants, pursuant to Sections 52 and 55 of the *Act*.

As the Tenants were unsuccessful in their claims, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenants' Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on March 1, 2019 after service of this Order** on the Tenants. 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: February 15, 2019

Residential Tenancy Branch