



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, FFT

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”), for an extension of time to dispute the notice, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant were both present for the duration of the teleconference hearing. The parties were affirmed to be truthful in their testimony and were provided full opportunity to make submissions, present testimony and evidence, and ask questions.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but did not receive a copy of the Tenant’s evidence. The Tenant confirmed that a copy of her evidence was not served to the Landlord.

As the Tenant’s evidence was not served to the respondent as required in the *Residential Tenancy Branch Rules of Procedure*, the Tenant’s evidence is not accepted and will not be included in this decision. The Tenant confirmed receipt of a copy of the Landlord’s evidence. This decision will be based on the verbal testimony of both parties as well as the documentary evidence of the Landlord.

Issues to be Decided

Should the Tenant be granted an extension of time to dispute the Two Month Notice?

Should the Two Month Notice be cancelled?

If the Two Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement that the tenancy began in approximately 2013 and that the Tenant is currently paying \$650.00 in rent. Rent is due on the first day of each month. The parties were not in agreement regarding whether a security deposit was paid at the start of the tenancy.

The Landlord testified that a Two Month Notice was served to the Tenant in person on February 1, 2019. The Tenant confirmed receipt of the notice on February 1 or February 2, 2019.

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

- 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 effective end of tenancy date of the notice was stated as April 1, 2019, but the Landlord stated that he did not serve the notice on January 31, 2019 as planned and recognized that this may add another month before the Tenant was to move out.

The Landlord provided testimony regarding his parents' plans to move into the rental unit and noted that the lower level unit was originally built with the intention for them to eventually move in. The Landlord submitted that his parents are no longer able to use stairs well and therefore need to move into the lower level unit. He submitted evidence to support his statement that his parents have intentions to move in.

The Tenant testified that she believes the Two Month Notice was served to her as the Landlord had been requesting an increase in monthly rent. She stated that she applied for dispute resolution late due to the Landlord informing her that he would talk to his parents if she paid more rent. As nothing came of their conversation, the Tenant applied to dispute the Two Month Notice on April 12, 2019.

The Landlord denied that he had requested more rent and stated that this was not about money, but somewhere appropriate for his parents to reside.

Analysis

The Tenant was served with a Two Month Notice pursuant to Section 49(3) of the *Act*. As stated in Section 49(8)(a) of the *Act*, a tenant has 15 days in which to dispute a notice served under Section 49(3).

As the Tenant confirmed receipt of the notice on February 1 or February 2, 2019, I find that she had 15 days from then to apply to dispute the notice.

However, the Tenant applied on April 12, 2019, which is well beyond the 15 days allowable. Accordingly, I find that Section 49(9) applies as follows:

(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.

While the Tenant applied for an extension of time in which to dispute the notice, I note that Section 66 of the *Act* allows for this in exceptional circumstances only. The Tenant testified as to conversations that were occurring with the Landlord regarding the Two Month Notice but did not provide any testimony of a situation that may classify as an exceptional circumstance, such as being in the hospital and unable dispute the notice in time.

As noted in *Residential Tenancy Policy Guideline 36: Extending a Time Period*, 'exceptional circumstances' are defined in part as follows:

The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling.

Based on the testimony of the Tenant, I am not satisfied that there were exceptional circumstances present that fit the definition above and that led to the Tenant applying outside of the 15 days allowable under the *Act*.

I also note that due to the One Month Notice being served on or around February 1, 2019, the effective date of the notice would be April 30, 2019, which is two full rental months following receipt of the notice.

However, as the Tenant did not apply within the 15 days allowable and is conclusively presumed to have accepted that the tenancy ends in accordance with Section 49(9), the application to dispute the notice is dismissed, without leave to reapply.

The parties discussed the validity of the notice and whether the notice was issued in good faith with the Landlord's intention for himself or a close family member to occupy the rental unit. However, given that I have found that the Tenant did not apply in time and has therefore accepted the notice, I do not find it necessary to assess the merits of the notice.

Pursuant to Section 55 of the *Act*, the Landlord is entitled to an Order of Possession. Upon review of the Two Month Notice I find it to comply with the form and content requirements of Section 52 of the *Act* and therefore grant the Landlord an Order of Possession effective May 31, 2019.

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee.

Conclusion

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

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **May 31, 2019 at 1:00 pm**. This Order must be served 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: May 28, 2019

Residential Tenancy Branch