



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

AAT AS CNL DRI FFT LAT LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order that the landlord allow the tenant to access the rental unit pursuant to section 65;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- more time to make an application to cancel the landlord's 2 Month Notice pursuant to section 66
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order that the landlord provide services and facilities as required by the tenancy agreement and law pursuant to section 65;
- a monetary order for compensation for damages or loss owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was primarily represented by their family members.

The tenant confirmed receipt of the landlord's 2 Month Notice dated May 29, 2019 on or about that date. The landlord confirmed receipt of the tenant's application of July 26, 2019 and materials. The tenant confirmed receipt of the landlord's evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of a single pdf file with numbered pages, The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the relief sought?

Background and Evidence

This tenancy began in 2014. This current monthly rent for this periodic tenancy is \$1,150.00 payable on the 15th of each month. The rental unit is a suite in a detached home with the landlord and their family occupying the other portion of the building.

The landlord issued a 2 Month Notice dated May 29, 2019 indicating the reason for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit. The landlord gave evidence that the close family member who will occupy the rental unit is the landlord's adult son.

The tenant submits that the 2 Month Notice is retaliatory as they had made complaints about the tenancy to the landlord shortly before the issuance of the notice. The tenant submitted into evidence a copy of a complaint letter dated May 10, 2019.

The tenant testified that they had filed an earlier application to dispute the 2 Month Notice under the file number on the first page of this decision. The tenant said that they had provided the incorrect contact information and were never provided with the Notice of Hearing. A hearing took place for that application on July 16, 2019. No party attended that hearing and the presiding arbitrator dismissed the tenant's application with leave to reapply. The arbitrator notes in their written decision of July 17, 2019, "Liberty to reapply is not an extension of any applicable limitation period." The tenant filed their present application on July 26, 2019.

The tenant seeks a monetary award of \$3,400.00 for overpayment of rent. The tenant testified that while they signed an agreement to increase the rent to its current amount, they did so under duress.

The landlord gave evidence that the rental unit will be occupied by the landlord's son who presently resides in the main portion of the building. The landlord gave evidence that the rental suite will provide additional space for all family members and more privacy. The landlord submits that the tenant's complaints did not influence their decision to end the tenancy.

The landlord disputes the tenant's monetary claim and says that there was no undue duress or bullying in agreeing to a new rent amount. The landlord submitted into evidence a copy of an agreement signed by the parties agreeing to the amount of the rent.

Analysis

Section 66 of the *Act* allows a time limit established in the Act to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that "exceptional implies that the reason for failing to do something at the time required is very strong and compelling." Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 49(8) of the Act provides that a tenant may dispute a 2 Month Notice within 15 days after the date the tenant receives the notice. Section 49(9) provides that if a tenant does not make an application in accordance with subsection (8) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present application the parties confirmed that the landlord's 2 Month Notice was served on the tenant on or about May 29, 2019. The tenant filed their initial application for dispute resolution on June 4, 2019 under the file number on the first page of this decision. The tenant said they had provided an incorrect email address and were never contacted by the Branch or provided a Notice of Hearing. That application was dismissed with liberty to reapply. As noted by the arbitrator in that decision, there was no extension of any limitation periods.

The tenant filed their present application disputing the 2 Month Notice on July 31, 2019, after the 15 days provided by the *Act*.

The tenant submits that they provided incorrect contact information to the Branch and were never provided a copy of the original Notice of Hearing. The tenant submits that their error is exceptional circumstance which gives rise to a basis for an extension of statutory time limits. I do not find the tenant's submission to be convincing.

I accept that the tenant had a bona fide intention to comply with the time limit and took reasonable steps to comply by filing their first application within the 15 days provided by the Act. However, I find that the tenant's conduct following the initial filing to be unreasonable. I find the need for a second application is a wholly a result of the tenant's conduct and negligence. I find that a reasonable applicant would follow up after the initial filing if they did not receive the hearing materials. There is no evidence that the tenant took any steps to pursue their initial application. Furthermore, I note that while the initial application was dismissed with liberty to reapply on July 17, 2019, the tenant delayed in reapplying for dispute resolution until July 31, 2019.

Under the circumstances I am unable to find that there were exceptional circumstances to allow an extension of a time limit established by the *Act*. I find that the cause of the delay in filing is wholly a result of the tenant's initial failure to provide correct contact information, compounded by their failure to follow up and further contributed by their failure to file a second application immediately after the initial dismissal.

I find that the tenant has failed to file an application for dispute resolution within the 15 days of service granted under section 49(8) of the *Act*. Accordingly, I find that the

tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 2 Month Notice, August 14, 2019, the date 2 months after the date of the notice and before the date in the month when rent is payable.

While the tenant disputes the validity of the 2 Month Notice based on the effective date provided, pursuant to section 53(2) I find that the effective date is deemed to automatically be corrected to the date complying with the *Act*, August 14, 2019.

I find that the landlord's 2 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I further find that there is little merit to the tenant's dispute of the 2 Month Notice on the basis of good faith. The tenant raises the timing of their complaint letter being issued before the issuance of the 2 Month Notice. I find that the landlord has provided sufficient evidence of their bona fide intentions through their documentary evidence and submissions.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 2 Month Notice has passed, I issue a 2 day Order of Possession.

As this tenancy is ending I find no need to make a finding on the portions of the tenant's application seeking relief pertaining to an ongoing tenancy. Those portions of the tenant's application are dismissed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find there is insufficient evidence in support of the tenant's claim for a monetary award. I do not find their submission that they are entitled to a monetary award for the equivalent of overpaid rent to be persuasive or supported in evidence. I find that the

parties entered into agreements regarding the amount of monthly rent as evidenced by the documents signed by the parties. I find little evidence that there was any duress, bullying or coercion in coming to these agreements such that they would invalidate them. I find that the tenant has not met their evidentiary burden and consequently dismiss this portion of the tenant's application.

As the tenant's application was not successful they are not entitled to recover their filing fee from the landlord.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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: September 27, 2019

Residential Tenancy Branch