



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regaing BRAD MO ENT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPL FFL
For the tenants: CNL FF

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) from both parties seeking remedy under the *Residential Tenancy Act* (“Act”) by both parties. The landlord applied for an order of possession based on a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated July 1, 2019 (“2 Month Notice”) and to recover the cost of the filing fee. The tenants applied to cancel the 2 Month Notice, to cancel a 1 Month Notice to End Tenancy for Cause dated June 28, 2019 (“1 Month Notice”), for more time to make an application to cancel the notices, to dispute an additional rent increase, for regular repairs to the unit, site or property, for an order to suspend or set limits on the landlord’s right to enter the rental unit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and recover the cost of the filing fee.

Tenant MW (“tenant”) and an agent for the landlord KM (“agent”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The tenant confirmed they were served with the landlord’s application. The agent stated that they were not served with the tenants’ application. The tenant stated was asked directly if the landlord was served with the tenants’ application and the tenant responded, “I believe so”, which I find to be insufficient evidence of service, especially given that a specific day or location could not be provided for service.

Preliminary and Procedural Matters

At the outset of the hearing, the name of the corporate landlord was corrected to reflect the actual corporate landlord name listed on the tenancy agreement. Both parties agreed to this amendment, which was made pursuant to section 64(3) of the *Act*.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

As I am not satisfied that the tenants served the landlord with their application, I will not be considering the tenants' application due to a service issue.

Issues to be Decided

- Is the landlord entitled to an order of possession?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The month to month tenancy began on August 29, 2016. Currently, monthly rent of \$775.00 is due on the first day of each month.

The parties agreed that the landlord served the tenants with a 2 Month Notice and a 1 Month Notice. Although the tenants filed their application on September 12, 2019, the parties were advised that neither the 2 Month Notice or the 1 Month Notice complied with section 52 of the *Act*.

Regarding the 2 Month Notice, instead of checking off one of the four reasons on page two of the 2 Month Notice, the landlord modified the 2 Month Notice by writing their own reason which states:

“Behaviour disturbing to other tenants.”

As a result, the 2 Month Notice is not a valid notice under the *Act*, which I will explain further below.

Regarding the 1 Month Notice, the landlord used an outdated 1 Month Notice from 2011, which is missing the Details of Cause section and current information about how to dispute 1 Month Notice for the tenants. I will explain further below as to why the 1 Month Notice is not a valid notice under the *Act*.

Given the above, I find that I do not need to consider when either the 2 Month Notice or the 1 Month Notice was disputed by the tenants as section 52 of the *Act* requires that before issuing an order of possession, that a notice to end tenancy must comply with section 52 of the *Act* and be in the proper form, which I will address further below.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 52 of the *Act* applies, and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) **when given by a landlord, be in the approved form.**

[Emphasis added]

Regarding the 2 Month Notice, there are only four reasons available for the landlord to choose and instead, I find the landlord added their own fifth reason, which I find renders the 2 Month Notice invalid and unenforceable. Therefore, I find the 2 Month Notice did not need to be disputed by the tenants as it became immediately invalid once the landlord modified the 2 Month Notice by adding their own reason.

Therefore, I **caution** the landlord not to modify a 2 Month Notice in the future in an attempt to evict a tenant.

Regarding the 1 Month Notice, as the 1 Month Notice was raised by the parties during the hearing, the prescribed forms are available on the RTB website at the following link: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms>. Instead of using the current 1 Month Notice, the landlord made the decision to use an outdated 2011 version of the 1 Month Notice, which I find makes the 1 Month Notice invalid as it is missing crucial information that has been added to the 1 Month Notice since 2011, including but not limited to the "Details of Cause" section where a landlord provides a description of the cause(s) listed above on the 1 Month Notice. This provides the tenant the ability to provide rebuttal evidence or testimony at a hearing and without knowing the specific allegations, the tenant is prejudiced by the landlord. Accordingly, and pursuant to section 62(3) of the *Act*, I find the 1 Month Notice did not need to be disputed by the tenants as it is an outdated form and does not comply with section 52 of the *Act* as it is not on the prescribed form.

Therefore, I **caution** the landlord not to use outdated notices in the future in an attempt to evict a tenant.

As both notices are invalid, I find that the notices have no force or effect.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

I do not grant the filing fee for either party as the landlord's application fails, and the tenant's application had service issues.

Conclusion

The 2 Month Notice and the 1 Month Notice are invalid as they are not in the prescribed form and one was modified, which is not permitted under the *Act*.

The tenancy shall continue until ended in accordance with the *Act*.

Neither party is granted the filing fee.

The decision will be emailed to the parties at the email addresses confirmed during the hearing. This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 16, 2019

Residential Tenancy Branch