



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, OLC, FFT, OPL, FFL

Introduction

This hearing involved cross applications made by the parties. On September 3, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 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*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On September 3, 2019, this Application was set down for a participatory hearing on October 25, 2019 at 11:00 AM.

On August 29, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Landlord's Use of Property pursuant to Section 49 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On September 6, 2019, this Application was set down for a participatory hearing to be heard as a cross application with the Tenants' Application.

Both the Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing and evidence package by registered mail, but they were not sure when they did this. The Landlord confirmed that this package was received in early September 2019. 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 and evidence package.

The Landlord advised that he served each Tenant a Notice of Hearing and evidence package by registered mail on September 8, 2019 and the Tenants confirmed that they received these packages. The Landlord also serve the Tenants with additional evidence

packages on September 29, 2019 and October 1, 2019 by registered mail. The Tenants confirmed that these packages were received as well. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act* and with the timeframe requirements for service of evidence pursuant to Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants were served with the Notice of Hearing and evidence packages.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

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.

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?
- Are the Tenants entitled to recover the filing fee?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord 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.

All parties agreed that the tenancy started on October 11, 2015. Rent was currently established at an amount of \$1,508.00 per month, due on the first day of each month. A security deposit of \$725.00 was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord stated that the Notice was served to the Tenants by hand on July 29, 2019. The reason the Landlord served the Notice is because "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 tenancy was September 30, 2019.

The Tenants advised that they were both present when the Landlord served the Notice. Tenant B.B. advised that it was his fault that the Notice was disputed late because he is the one responsible for processing paperwork. He stated that he did not realize that there was a time limit to dispute the Notice and his attention was focused mainly on the written warning that the Landlord gave him. He stated that due to his medical condition of somatoform disorder, he is unable to keep track of dates and deadlines; however, he did not submit any medical documentation to corroborate this condition. He stated that Tenant A.G. does not fill out forms or do paperwork and she was not aware that the Notice could be challenged.

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 Tenants on July 29, 2019, 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 July 29, 2019 by hand. 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 third page of the Notice as well.

As the Tenants received the Notice on July 29, 2019, the fifteenth day to dispute the Notice fell on Tuesday August 13, 2019 and the Tenants must have made this Application by that day at the latest. However, the undisputed evidence is that the

Tenants made their Application on September 3, 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.” When the Tenants were questioned if there were any exceptional circumstances that prevented them from disputing the Notice within the required time frame, Tenant B.B. cited his medical condition as the main reason he did not dispute the Notice on time as well as being unaware that the Notice must be disputed. As well, he stated that Tenant A.G. was simply not capable of disputing the Notice.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenants’ testimony and reasons would constitute exceptional circumstances. While the Tenants have provided a medical reason for not disputing the Notice on time that may be considered exceptional, there has been no medical documentation submitted to corroborate this condition. Furthermore, there is no evidence or reasonable explanation for why Tenant A.G. or another person could not have disputed the Notice. As such, 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*.

Settlement Agreement

The parties raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenants agreed as follows:

1. The Tenants will have possession of the rental unit until December 1, 2019 at 1:00 PM.
2. The Tenants did not pay September 2019 rent as their compensation under the Notice. Since they have possession for the rental unit until December 1, 2019, the rent for November must be paid in full on the first of the month, as per the tenancy agreement. As such, the compensation requirements under the Notice will be satisfied.
3. The Notice of July 29, 2019 is still live and in effect with respect to the compensation requirements under Section 51 of the *Act*.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

If condition 1 is not satisfactorily complied with, the Landlord is granted an Order of Possession that is effective on **December 1, 2019 at 1:00 PM after service of this Order** on the Tenants.

In addition, if condition 2 is not satisfactorily complied with, the Landlord is granted a Monetary Order in the amount of **\$1,508.00** for November 2019 rent. This Order is enforceable only if the Tenants fail to comply with the payment requirements set forth in the settlement above.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

The parties reached a full and final settlement agreement in resolution of their disputes. I have recorded the terms of settlement in this decision.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenants if necessary, effective on **December 1, 2019 at 1:00 PM**. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, the

Landlords may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

In addition, I provide the Landlord with a conditional Monetary Order in the amount of **\$1,508.00** to serve and enforce upon the Tenants, if necessary. The Order must be served on the Tenants by the Landlords. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 25, 2019

Residential Tenancy Branch