



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FFT

Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the 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 their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. At the commencement of this hearing, the spelling of the landlord's last name was revised to reflect the correct spelling outlined above.

As Tenant JMH (the tenant) confirmed that they were handed the 2 Month Notice by the landlord on August 22, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on September 16, 2019, they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 11, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Should an extension of time be granted to the tenants in applying to cancel the landlord's 2 Month Notice? Should the landlord's 2 Month Notice be cancelled? If not,

is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On May 18, 2018, the parties entered into a 7 month fixed term tenancy agreement that was to run from June 1, 2018 until December 31, 2018. When the initial term expired, the tenancy continued as a month-to-month tenancy.

The landlord's 2 Month Notice seeking an end to this tenancy by October 31, 2019, entered into written evidence by the tenants, identified the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord said that they live very close to the tenants and that the landlord has entered into a Mutual Agreement to End Tenancy with the landlord's own landlord so that the landlord can move into these premises.

The tenants' application to cancel the 2 Month Notice of August 22, 2019, was received by the Residential Tenancy Branch on September 11, 2019, more than 15 days after the 2 Month Notice was issued to the tenants. Having failed to apply to cancel that notice within 15 days, the tenants were conclusively presumed to have accepted that their tenancy ended on October 31, 2019, the effective date on that Notice.

The parties agreed that the tenants made a payment to the landlord of \$4,000.00 for November and December 2019. The landlord and the tenant agreed that the landlord has returned \$2,000.00 of that payment to the tenant, although the tenant has not yet tried to negotiate that cheque. At the hearing, the tenant requested that the landlord provide the tenants with a certified cheque in the amount of \$2,000.00 to replace the non-certified cheque in the tenant's possession. The landlord did not dispute this request.

The parties also confirmed that the landlord has not yet provided the tenants with an allowance equivalent to one month's rent as a result of the landlord having issued the tenants the 2 Month Notice.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2019, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.
2. Tenant JMH confirmed that they have received the landlord's cheque in the amount of \$2,000.00.
3. The landlord confirmed that there are sufficient funds in the account in which the above-noted cheque has been handed to Tenant JMH to enable the tenant to negotiate that cheque in a financial institution of the Tenant JMH's choosing.
4. The parties agreed that this tenancy ends on the basis of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property of August 22, 2019, and that the tenants will not have to pay any rent or payment for the month of December 2019, in order to comply with the provisions of the *Act* enabling the tenants to withhold their last month's payment following receipt of the landlord's 2 Month Notice.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenants do not vacate the rental premises in accordance with their agreement. by 1:00 p.m. on December 31, 2019. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. 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.

To give legal effect to the agreement reached between the parties, I order that in the event that the landlord's \$2,000.00 cheque currently in the possession of the tenant

cannot be negotiated at the tenant's financial institution, that the landlord is to provide the tenants with a certified cheque in the amount of \$2,000.00.

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: November 21, 2019

Residential Tenancy Branch