



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M OLC MT DRI PSF RR FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act), seeking to cancel a 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion of Rental Unit dated September 28, 2019 (4 Month Notice), for more time to make an application to cancel a notice to end tenancy, to dispute an additional rent increase, for an order directing the landlord to provide services or facilities required by law or the tenancy agreement, for a rent reduction and to recover the cost of the filing fee.

Tenant KDH (tenant) and the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. Given the above, I find the parties were sufficiently in accordance with the Act.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 4 Month Notice and for more time to make an application to cancel a notice to end tenancy. I find that not all the claims on

the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the 4 Month Notice, for more time to make an application to cancel a notice to end tenancy, and the tenants' application to recover the cost of the filing fee at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply.

In addition to the above, 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.

Issues to be Decided

- Should the 4 Month Notice be cancelled?
- Are the tenants entitled to the recovery of the cost of their filing fee under the Act?

Background and Evidence

The tenant confirmed that they were served on September 28, 2019 with the 4 Month Notice dated September 28, 2019. The effective vacancy date on the 4 Month Notice is listed as January 31, 2020. The tenants disputed the 4 Month Notice on November 27, 2019, based on the documentary evidence submitted in evidence. Although the tenant testified that they filed their application on October 28, 2019 to dispute the 4 Month Notice, the tenant failed to provide any documentary evidence to support their testimony. The tenants' documentary evidence including the application and filing fee receipt indicates that the tenant filed their application on November 27, 2019.

The landlord testified that the tenants continue to occupy the rental unit and that the tenants did not pay rent for January 2020, which is the month the tenants are entitled to the one month of compensation for having been served a 4 Month Notice under the Act. The 4 Month Notice is signed, dated and completed in full, in accordance with the Act.

Regarding the tenants' request for more time to make an application to cancel a notice to end tenancy, the tenant testified that they attempted to file their application on October 28, 2019 but that there were problems. In the interests of fairness, I have also reviewed the case management system audit notes, which do not support that the tenant filed their application any earlier than the November 27, 2019 date on the Service BC documents submitted in evidence by the tenant.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

4 Month Notice – Sections 49(8) and 49(9) apply and state:

49(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) **a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.**

49(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.**

[Emphasis added]

As a result, I find the tenant waited 30 days longer than the Act provides for and as a result, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date of the notice, which is January 31, 2020.

Tenants' request to allow more time to make an application to cancel the 4 Month Notice - Section 66 of the Act and Residential Policy Guideline 36 – Extending a Time Period state that an arbitrator may extend or modify a time limit established by the Act **only in exceptional circumstances**. An example of an exceptional circumstance is that the party making the request is in the hospital at all material times.

In the matter before me, the tenant's testimony claims that there were problems submitting their application on October 28, 2019, which is inconsistent with the tenants' documentary evidence, which supports the application date of November 27, 2019, which is well beyond the 30-day timeline under the Act. Furthermore, I have reviewed audit notes, which do not support that the tenants applied any earlier than November 27, 2019. Therefore, I find that the tenants have failed to provide any supporting evidence of an exceptional circumstance that would justify the tenants more time to

make an application to cancel the 4 Month Notice. As a result, **I dismiss** the tenants' application for more time to make an application to dispute the 4 Month Notice due to insufficient evidence, without leave to reapply.

Section 55 of the Act applies and states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Given the above and considering that I find the 4 Month Notice complies with section 52 of the Act, I must grant the landlord an order of possession effective **January 31, 2020 at 1:00 p.m.**, which is the effective date on the 4 Month Notice.

As the tenants' application has failed, I do not grant the tenants the recovery of the filing fee.

Conclusion

The tenants' application to cancel the 4 Month Notice dismissed without leave to reapply as indicated above.

The landlord has been granted an order of possession effective January 31, 2020 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted as indicated above.

This decision will be emailed to both parties as indicated above. The order of possession will be emailed to the landlord only for service on the tenants.

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: January 23, 2020

Residential Tenancy Branch