



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING
SOCIETY and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

CNQ

Introduction

On January 9, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Notice") pursuant to Section 49.1 of the *Residential Tenancy Act* (the "Act").

Both Tenants attended the hearing and D.K. attended the hearing as an agent for the Landlord. Both parties provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing and evidence package by registered mail on or around January 9, 2020 and D.K. confirmed that she received this package on January 13, 2020. 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.

D.K. advised that the Landlord's evidence was served to the Tenants by registered mail on March 3, 2020 and they acknowledged receiving this evidence on March 9, 2020. As well, they stated that they had reviewed the evidence and that they were prepared to respond to it. While this evidence was not served in accordance with the time frame requirements of Rule 3.15 of the Rules of Procedure, as the Tenants were prepared to respond to this evidence, I have accepted the Landlord's evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

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 1, 2015 and that rent was currently established at a subsidized amount of \$368.00 per month, due on the first day of each month. The Tenants paid a security deposit of \$448.00.

D.K. advised that the Landlord served the Notice by registered mail on December 16, 2019 (the registered mail tracking number is on the first page of this decision). The registered mail tracking history indicated that a notice card was left for the Tenants on December 17, 2019, that indicated where and when to pick up the registered mail package. In addition, a final notice card was left for the Tenants on December 27, 2019, that indicated that the package would be returned to sender if not collected within 10 days.

The reason that the Landlord checked off on the Notice was because “The tenant no longer qualifies for the subsidized rental unit.” The Notice indicated that the effective end date of the tenancy was February 29, 2020.

Tenant L.K. stated that they did not receive notification cards from Canada Post until early January, so they only picked up the Notice then. She speculated that the reason they did not get any notification cards from Canada Post is because this was sent

during the Christmas and New Year holiday season. From this, I infer that she was suggesting that the mail service is unreliable during this time. However, the Tenants did not provide any evidence to support their submission that they only received the Notice in early January 2020.

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.

I have reviewed the Landlord's Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on December 21, 2019. According to Section 49.1(5) of the *Act*, the Tenants have 15 days after the date the Tenants receive the Notice to dispute it. Section 49.1(6) 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 (5), 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."*

As the Notice was deemed to have been received on December 21, 2019, the Tenants would have had until Sunday January 5, 2020 to dispute this Notice. As January 5, 2020 was a weekend, the Tenants must have made this Application by Monday January 6, 2020 at the latest. However, the undisputed evidence is that the Tenants made their Application on January 9, 2020. The Tenants were late in making this Application, and they did not include in their Application a request for more time to do so.

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* by disputing the Notice on time, I am satisfied that the Tenants have been conclusively presumed to have accepted the Notice. As such, 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*. However, D.K. advised that she was willing to extend the Order of Possession date to April 30, 2020 to allow the Tenants more time to vacate.

Based on this request and pursuant to Section 55 of the *Act*, I exercise my authority to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on April 30, 2020**.

Conclusion

Based on the above, I dismiss the Tenants' Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on April 30, 2020** after service of this Order on the Tenants. 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.

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: March 13, 2020

Residential Tenancy Branch