



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ-MT, RP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to request more time to file to dispute the Notice, to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, (the “Notice”) dated December 16, 2019, and to request on order for the Landlord to make regular repairs the rental unit. The matter was set for a conference call.

Both Tenants, the Tenants’ Advocate (the “Tenant”) and the Property Manager (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. All parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Preliminary Matter

I have reviewed the Tenants’ application, and I note that they have applied to cancel a Notice to end tenancy as well another issue. I find that this other issue is not related to the Tenants’ request to cancel the Notice. As that matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I am dismissing with leave to reapply, the Tenants' claim for an order for the Landlord to make regular repairs to the rental unit.

I will proceed with this hearing on the Tenants' claims for more time to file an application to dispute a Notice and to cancel the Notice.

#### Issues to be Decided

- Are the Tenants entitled to additional time to file their application to dispute the Notice?
- Should the Notice dated December 16, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?

#### Background and Evidence

The Landlord testified that a Notice to end tenancy was served to the Tenants by registered mail on December 16, 2019. The Notice indicated that the Tenants were required to vacate the rental unit by February 29, 2020. Both the Landlord and the Tenants provided a copy of the Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- *The tenant no longer qualifies for the subsidized rental unit.*

The Tenants testified that they had contacted the Landlord after receiving the notice to try and negotiate to have the Notice cancelled and that they did not understand what they need to do, to dispute the Notice legally. When asked by this Arbitrator, the Tenants confirmed that they received the three-page notice and that the information on how to dispute the Notice with the Residential Tenancy Branch was listed on the Notice.

The Tenants testified that they had believed that they could speak to the Landlord and have the matter resolved through negotiation.

The Tenants also testified that they need more time to file as it was the holidays, and the Landlord had been out of the office for a few days and that they were both very stressed due to unemployment issues.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenants have requested more time to file their dispute of the Notice pursuant to section 66 of the *Act*. The *Act* allows for an extension of time; however, that extension may only be granted if the party requesting the extension has proof that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

#### ***Director's orders: changing time limits***

**66** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

I have reviewed the Tenants' application and submissions for this proceeding, and I noted that they had not submitted documentary evidence to support their request for additional time to file their application to dispute the Notice. I acknowledge the Tenants' testimony during these proceedings that they had attempted to negotiate with the Landlord, in an attempt to the Notice cancelled and that they were under personal stress at the time of the Notice being issued. However, I find that the Tenants' testimony insufficient evidence to satisfy me that there was an exceptional circumstance that required an additional 52 days to file their dispute. Therefore, I dismiss the Tenant's application to be allowed additional time to file to dispute the Notice.

I accept the verbal testimony of the Landlord that he served the Notice by registered mail sent on December 16, 2019. Pursuant to section 90 of the *Act*, I find that the Tenants are deemed to have received the Landlord Notice to end the tenancy on December 23, 2019, the first business day, five days after the Notice was mailed.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice.

**Landlord's notice: landlord's use of property**

**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.*

*(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.*

Accordingly, I find that the Tenants had until January 7, 2020, to dispute the Notice. I have reviewed the Tenants application and, I find that the Tenants failed to dispute the Notice on February 28, 2020, 52 days outside of the statutory timeline. I find that the Tenants did not dispute the Notice, as required, and that the time for doing had expired.

Therefore, I find that the Tenants are conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice. I find the Notice dated December 16, 2019, is valid and enforceable.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

**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.*

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of this Order upon the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenants.

### Conclusion

I dismiss the Tenants' application for more time to file to dispute the Notice.

I dismiss the Tenants' application to cancel the Notice Dated December 16, 2019.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenants. The Tenants must be served with this Order. 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: April 27, 2020

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Residential Tenancy Branch