



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROSSRIDGE VENTURES
INC. and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

CNL, MT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- for more time to apply to cancel a Two Month Notice to End Tenancy for Landlord's Use dated September 27, 2019 ("Two Month Notice"), and if more time is granted;
- to cancel the Two Month Notice; and
- to recover the \$100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders

sent to the appropriate Party.

I have referred to the “Landlord” and the “Owner” throughout this decision. The Landlord is the corporate entity identified on the tenancy agreement and on the style of cause in this Decision as the Landlord, and the Owner is the man who owns the corporate Landlord and who has indicated his intention to move into the residential property.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

This hearing was scheduled following a review consideration decision by the RTB of the first arbitrator’s decision. The Landlord successfully applied to have that decision reviewed, and a re-hearing was scheduled before me.

The Landlord has not applied for an order of possession; however, section 55 of the Act states that if a tenant’s application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Is the Tenant entitled to an extension of the time within which he was required to apply to cancel the Two Month Notice?
- If the Tenant is granted more time, should the Two Month Notice be cancelled or confirmed?
- If the Two Month Notice is confirmed, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2014, running to May 31, 2015, and then operating on a month-to-month basis. They agreed that the Tenant pays the Landlord a monthly rent of \$300.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$150.00, and no pet damage deposit. The Landlord still holds the Tenant’s security deposit.

The Parties agreed that the residential property is farmland with a main house and a

cabin, which constitutes the rental unit. The Parties disagreed about the street number of the rental unit address. This is relevant, as the Parties agree that the Two Month Notice was delivered to the main house on the residential property, rather than to the address the Tenant said was the rental unit address. As such, the Tenant said the delivery of the Two Month Notice was delayed, as will be detailed further below. I note the rental unit address in the tenancy agreement is consistent with the address to which the Landlord mailed the Two Month Notice for service on the Tenant.

The Tenant submitted a copy of the Two Month Notice, which was signed and dated September 27, 2019, had the rental unit address, was served by mail on October 8, 2019, and had an effective vacancy date of December 31, 2019. The ground for the eviction that was checked on the Two Month Notice was that “the Landlord is a family corporation, and a person owning voting shares in the corporation or a close family member of that person intends in good faith to occupy the rental unit.”

More Time to Apply for Dispute Resolution

The Tenant said that he was given the Landlord’s Two Month Notice package in November 2019 by a caretaker, S.S., of the residential property (“Caretaker”). The Parties agreed that the Caretaker lived in the main house on the residential property. The Tenant said he received it on approximately November 6th or 7th, 2019. The Tenant said that he could not have received it earlier than November 2019, because the Caretaker was away taking a flight training course in October 2019.

In the hearing, the Agent said:

I am honestly very, very unhappy. [The Tenant] is saying a blatant untruth, despite having affirmed to tell the truth [at the beginning of the hearing]. [The Tenant] phoned me in October to say he’d got it, and to discuss the notice, and to offer to increase the rent and stay there. He phoned me to tell me that.

In a written submission, the Tenant said:

Currently my rent is payable at \$300.00 per month. I have been paying that amount since I first moved into the pickers shack here five years ago. The tenants before me paid the same for the 7 years that they lived here. I believe [the Owner] has now owned the property for 8 years. He has had the entirety of that time to increase my rent yearly and legally to bring it up to current ...market prices. My rent also could have been raised when my now 10-year-old son and I

moved in. I mention this because I feel that it is not his intent to move in but instead to place the cabin up for use in the very lucrative air b and b market that now exists here.

I had a phone conversation with [the Agent] after I received the notice and suggested that instead of evicting us so that they could do this, why not just negotiate with me a suitable amount that is closer to the current market value. I was told that he had discussed my offer with [the Owner] and the answer was no [emphasis added]

The Tenant submitted an undated letter from the Caretaker, who commented on the envelope that he gave the Tenant, which included the Two Month Notice from the Landlord. The Caretaker's comments included:

My neighbour, [the Tenant], has asked me to write a letter to you to clarify a few points on his behalf concerning his pending eviction notice.

For most of the month of October 2019 I was away on flight training and upgrading to my pilots licence. My mail was checked sporadically. I don't recall exactly when I found the express post envelope in my mail box but I did get it to him in the early part of November.

[reproduced as written]

The Agent submitted a copy of an email exchange between him and the Caretaker dated November 22, 2019. The Agent said:

We sent the attached notice to [the Tenant] back in October. [The Tenant] gave me a call and said you received the notice and handed it to him. Can you just confirm this by signing on Page 2 where it says the Notice was provided to [the Tenant] in person. We just need the record for our files. Please sign and email back to me. Thanks very much.

The Caretaker's response was:

I can confirm I did receive that letter in my mailbox and handed it to him in person. I can't remember the exact date. I will do my best to have it printed off signed and returned by this evening.

Further, the Agent submitted a letter from the Owner to the Caretaker dated November 29, 2019, which addresses the Owner's discovery of some fraudulent behaviour on the part of the Caretaker. This letter included the following:

As you know, the [fruit packing company] has advised us and provided documentation showing that they made payments to you totaling \$22,183.50, which you have admitted receiving. These payments were properly due to us as payment for the purchase of cherries from our orchard. You are entitled only to payment from [the Landlord] for work performed by you pursuant to our agreement for orchard services. The cherries and any payments derived from their sale remain at all times our property and you are not entitled to any payments therefrom. You intentionally represented yourself to the [fruit packing company] as operator of the orchard by providing your name as operations name on the [fruit packing company] forms, which you knew to be false. You also provided the [fruit packing company] with a void cheque from your personal bank account instead of [the Landlord's] corporate bank account for the purpose of receiving payments from the [fruit packing company] that you knew were properly due to [the Landlord]. You did not notify us that you received the payments from the [fruit packing company]. After we contacted you regarding the payments you transferred those funds out of your bank account instead of paying the monies to us. You must immediately pay to us the amount of \$22,183.50 which you have fraudulently stolen from us. If we do not receive payment of this amount in full by December 6, 2019, we will take all actions and pursue all remedies, both civil and criminal, available to us to recover the monies without further notice to you.

During the hearing, the Parties gave me the file number for the first hearing for which the Tenant applied, but later cancelled. He later applied again, which ultimately resulted in my hearing the matter. In the previous file, our records show that the Tenant indicated that the Two Month Notice was delivered to him on October 24, 2019 and that he applied to dispute it on November 12, 2019.

In his last statements in the hearing, the Agent said that the Tenant "admits that everything I said is true. He's just trying to skew the dates to be favourable to him. He can't give you a precise date. None of it matters, because he failed to send us the notice [of hearing]. [The Tenant] hasn't complied with a thing in the Act at all." In his last statements in the hearing, the Tenant said:

Again, I refer you back to [the Caretaker's] letter in which he states that he gave me the eviction sometime in November. Neither of us can remember when, but

I've given my best guess. Given the date I received the eviction notice, it didn't give me two months. That's about it. Everything else is conjecture on my part, as [the Agent] points out.

Validity of the Two Month Notice

In his Application and in the hearing, the Tenant indicated that the reason he disputes the Two Month Notice is because he believes the Owner does not want to move into the rental unit, because he is wealthy. In contrast, the Agent stated that the Owner is a 70-year-old man who has been talking about stepping back from work for a number of years. The Agent said that the Owner bought the property in 2010, in furtherance of his dream of having a small winery, and as a place to host his family.

The Agent said:

That's why he bought it ten years ago, in anticipation of retiring. There is a house on the property. He's going to use the entire property. They are Italians and have a big family. They'll fix up the cabin and have his children and grandchildren around. He wants [the residential property] to himself.

We've been nice to [the Tenant] in the last six years. Now he's accusing that we're going to Airbnb it. We have extensive holdings in the Vancouver area. We have never put up our properties on Airbnb. He's just throwing around accusations.

The Agent said that in September, the Owner told him that "now's the time; please give the notice." The Agent went on:

[The Owner's] wife had been unwell for a number of years battling cancer, so he had to let go of business to take care of his wife. She died in October. They were married for 50 years, so he is crushed and devastated. Now since he delayed so long, he didn't give his wife the opportunity to live in a more relaxing atmosphere. He's more determined to follow through in honour of his wife. He'll build a winery and name it [F.] in honour of his wife. I told him he can't go up there yet, because Tenant applying to dispute our notice.

Analysis

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

More Time to Apply for Dispute Resolution

Section 66 of the Act states that the director may extend a time limit established by the Act only in “exceptional circumstances”.

The Tenant acknowledged receipt of the Two Month Notice and that he had a conversation with the Agent after that receipt. However, the Parties disagreed on when that conversation happened – was it in October or November? This is relevant in terms of when the Tenant received the Two Month Notice, and how long it took him to apply for dispute resolution thereafter.

Section 49 of the Act sets out the rules surrounding what a tenant must do to dispute a notice to end the tenancy for landlord's use. A tenant must apply for dispute resolution within 15 days of having received the notice.

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,

...

- (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.

In the case before me, the Parties are at odds as to when the Tenant received the Two Month Notice. I find I prefer the Agent's version of events on a balance of probabilities, for the reasons set out below. I accept that the Tenant called the Agent in October 2019, after having received the Two Month Notice that month.

As the Tenant said, the Landlord has kept the rent low – below market rates – for the duration of the tenancy. While the Tenant offered to pay more rent in order to stay in the rental unit, the Owner declined this offer. I find that the Two Month Notice is bad news for the Tenant, as he is apparently comfortable in the rental unit and pays unusually low rent, for which he was willing to pay more, if it meant he could stay there.

The Caretaker said that he wrote his letter at the request of the Tenant. He said he did not remember when he received the express post package for the Tenant; however, he indicated that he clearly remembered having given it to the Tenant in early November. This is contrary to his November 22, 2019 email exchange with the Agent, in which he said he could not remember when he received the envelope, nor when he gave it to the Tenant. I find this inconsistency reduces the reliability of the Caretaker's evidence in this regard.

Further, the Tenant would have asked the Caretaker to write the letter for him in preparation for this hearing. Therefore, I find it is more likely than not that the Caretaker's letter for the Tenant was written further to his having been accused of theft by the Owner. I, therefore, find it more likely than not that the Caretaker was more inclined to help the Tenant, to the detriment of the Owner, than the other way around.

Based on the evidence before me overall, I find it more likely than not that the Tenant received the Two Month Notice in October 2019. This is consistent with our records, which say the Tenant advised the RTB that he received the Two Month Notice on October 24, 2019. According to section 49(8) of the Act, the Tenant was required to apply for dispute resolution to dispute the Two Month Notice within 15 days of October 24, 2019, or by November 9, 2019. I find that the Tenant applied for dispute resolution on November 12, 2019. November 9, 2019 was a Saturday, although parties may apply for dispute resolution online when BC Services Offices are closed to the public.

I find that the Tenant was late applying to dispute the Two Month Notice. I find that the Tenant did not have an exceptional circumstance that would allow me to extend the time in which he could apply, pursuant to section 66 of the Act. Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and that he should have vacated the rental unit by that date.

Given my last conclusion, it is unnecessary for me to decide on the next issue; however, having considered the Parties' evidence on all matters, I have addressed the validity of the Two Month Notice to resolve all issues in this matter for the Parties.

Validity of the Two Month Notice

According to Rule 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Rule 6.6 also states:

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The Tenant acknowledged that his primary basis for disputing the Two Month Notice is because he said it was delivered to him within the two months prior to the effective vacancy date of the Two Month Notice - December 31, 2019. The Tenant agreed that his statements regarding the Owner's intentions for the rental unit are "conjecture".

Even if the Caretaker gave the Two Month Notice package to the Tenant in early November, as these two people have said (though I have not accepted this evidence as reliable), section 53 of the Act addresses such a situation. Section 53 states that if a party gives the other party a notice to end tenancy that does not comply with the Act, the notice is deemed to be changed to the earliest date that complies. Accordingly, if the Tenant received the Two Month Notice in November 2019, the effective vacancy date would have been changed to January 31, 2020, pursuant to section 53.

Based on the evidence before me overall, I find on a balance of probabilities that the Landlord has provided sufficient evidence of the validity of the Two Month Notice, which I find has not been negated by the Tenant's evidence. I also find that the Two Month Notice is consistent with section 52 of the Act, as to form and content.

As a result, I dismiss the Tenant's Application to cancel the Two Month Notice, and I decline to award the Tenant with recovery of the Application filing fee. As I have found the Two Month Notice to be valid and consistent with section 52 of the Act, I award the Landlord with an Order of Possession. As the effective vacancy date has passed, the Order of Possession will be effective **two days after service of this Order** on the Tenant.

Conclusion

The Tenant's Application to cancel the Two Month Notice is unsuccessful, as I dismissed it, because he was out of time to apply to dispute it, and because the Landlord provided sufficient evidence to establish the validity of the Two Month Notice. Given his lack of success, I also decline to award the Tenant recovery of the Application filing fee.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 27, 2020

Residential Tenancy Branch