



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT

Introduction

The tenants filed an Application for Dispute Resolution on April 1, 2020 seeking an order to cancel the 'Two Month Notice to End Tenancy for Landlord's Use of Property' (the "Two Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 25, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenants and the landlords, as well as their respective agents, attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Both the landlords and the tenants confirmed receipt of the notice of this hearing and the evidence prepared in advance. All parties in attendance were prepared to speak to the issues at hand regarding this tenancy.

Issue(s) to be Decided

Are the tenants entitled to more time in which to file an Application for Dispute Resolution, having exceeded the limit of time in which to do so as prescribed by section 66 of the *Act*?

Are the tenants entitled to an order that the landlords cancel or withdraw the Two Month Notice?

Should the tenants be unsuccessful in seeking to cancel the Two Month Notice, are the landlords entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

I have reviewed the evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenants and landlords both agreed that there was a tenancy agreement in place, signed anew when presented to the tenants on January 8, 2020. The tenancy began on January 1, 2020. The tenants paid a security deposit amount of \$450.00, and no pet deposit. The current rent amount is \$900.00, payable on the first of each month.

The landlords issued this Two Month Notice on February 1, 2020. The landlords gave March 31, 2020 as the date by which the tenants must move out of the rental unit. The reason for the Two Month Notice was that the unit will be occupied by the landlords or the landlords' close family member. In the hearing, the landlords stated they served this document on February 1, 2020. The landlords stated that the tenants accepted this document when served: "the tenants accepted, signed and confirmed."

On their Application for Dispute Resolution, the tenants state it was delivered on February 4, 2020. The tenants provided a copy of the Two Month Notice into evidence for this hearing. The copy of this document before the parties for the hearing bears signatures beside each of the tenants' names on page 1 of 1.

The tenants, via a representative in prior communication with the landlords, raised the issue of receipt of this notice, and questioned whether the signatures beside the names on page 1 indicate that the tenants acknowledged service, or whether the signatures constitute an agreement of the move-out date of March 31, 2020.

The evidence submitted by the landlords shows messaging between the two parties throughout February and March, and then into April. This messaging toward the end of March concerns the tenants' ability to find new accommodation and their ability to pay rent. There was a question of whether the final month in the tenancy before the tenants vacate the unit is rent-free, and by March 31, the tenants inform the landlords that they have not found another place to live. By mid-April, the tenants are still informing the landlords that they do not have a place, and that they will pay the rent for April on the 15th.

The tenants did not move out of the rental unit by March 31, 2020. This was complicated, in their submissions, by one of them acquiring a virus and needing to quarantine. They also stated it was difficult to search out new living arrangements in this difficult time of public health issues.

The tenants provided they were waiting to move out – this is the reason they requested more time to apply for this hearing. This meant securing another place of accommodation, which became difficult due to social distancing and efforts at quarantining. In the hearing their agent stated this is why the tenants filed their Application for Dispute Resolution on May 1st. In the hearing, the tenants attempted to negotiate a move out date that would be one month past the end of emergency measures.

Analysis

The *Act* section 49(3) states a landlord may end a tenancy if the landlord intends, in good faith, to occupy or have a close family member occupy the rental unit. Further, section 49(8) stipulates that a tenant who receives such a notice may dispute it by submitting an Application for Dispute Resolution within 15 days of receiving it.

I find the tenants received the Two Month Notice on February 1, 2020. I accept each tenant's signature shows they signed for receipt of the document, and the landlords delivered this document in person. In the hearing they did not provide an alternate account; there thus no stronger evidence to the contrary.

Regarding the tenants' request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances.

In this situation, I find that exceptional circumstances for the tenant are not proven in neither the documentary evidence submitted, nor the oral testimony. The tenant did not show that exceptional specific circumstances were in place during the 15-day dispute period that expired on February 15, 2020.

The tenants presented that there was an issue of illness that prevented them from deciding to move by the provided effective date on the Two Month Notice: March 31, 2020. This was complicated by the lack of available rental units that they could find that were available during the lockdown period. The communication shows these concerns arose some time after the period in which the tenants could apply to dispute the Two Month Notice. That is to say: measures to prevent the spread of Covid-19 entered an emergency stage of awareness, prompting social interaction to shut down approximately one month after the tenant's period in which to dispute the Two Month Notice ended.

Moreover, the tenants did not articulate an intention to dispute the Two Month Notice. All communication between the tenants and landlords concerns the payment of rent in the following month of March, and on into April. There is no indication that the tenants took issue with the landlords' stated need for the unit, nor the way the landlords' presented this as the reason for issuing the Two Month Notice on February 1, 2020.

In short, there is no evidence to show they questioned the validity of the Two Month Notice, neither to the landlords directly, nor through the avenue of dispute resolution.

I find the tenants were aware of the issues surrounding the need for the rental unit by the landlords. The intention to dispute the notice is not present in the initial application period – nor is an intention stated prior to the end of tenancy. Rather, the evidence shows complications surrounding new accommodation took over. I find this is to postpone the vacancy until a later date when obtaining accommodation will not be prevented by difficulties with emergency measures.

In the hearing, the tenants' advocate presented plainly that the tenants want to leave the unit – there is no evidence to the contrary. The tenants were planning to move out – I find this constitutes an acknowledgement of the end of tenancy.

This Two Month Notice has the end of tenancy date as March 31, 2020. Under the *Act* section 49, the end of tenancy is effective on the day before the day in the month that rent is due, and no earlier than two months after the date the tenant receives the notice. Further, section 53 states that if a landlord gives a notice with an effective end of tenancy date that does not comply with the *Act*, the notice is deemed changed to the earliest date permitted under the relevant section.

This effective date, as provided on the document, is earlier than what is permitted; therefore, I deem the tenancy end date is April 30, 2020.

The landlord served this Two Month Notice on February 1, 2020. The tenants failed to apply for dispute resolution within the specified time limit of 15 days after they received it. Furthermore, and as noted above I have found the tenants are not entitled to more time to dispute the One Month Notice. On this basis, I find the tenants are conclusively presumed under sections 49(9) of the *Act* to have accepted that the tenancy ended on the effective date: April 30, 2020. As such, the tenants must vacate the rental unit.

For these reasons, I dismiss the tenant's application to cancel the Two Month Notice. The tenancy is ending.

The *Act* section 52 requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the Two Notice issued by the landlord on February 1, 2020 complies with the requirements set out in section 52.

The *Act* section 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed, or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*.

I find that the Two Month Notice complies with the requirements of form and content. Therefore, I grant the landlords' request for an Order of Possession under section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlords **effective two days after service of this Order**. The landlords are 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 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 *Act*.

Dated: June 15, 2020

Residential Tenancy Branch