



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, LA, OLC, FF

Introduction

On April 15, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the following relief:

- to cancel a Two Month Notice to End Tenancy for Landlord Use of Property.
- to deduct the cost of repairs, services or facilities from rent.
- to authorize the Tenant to change the locks.
- for an order that the Landlord comply with the Act, Regulation or tenancy agreement.
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlords appeared at the hearing on time; however, the Tenant did not. At the twelve-minute mark of the hearing the Tenant had not called into the hearing and I orally informed the Landlords that the Tenant's application is now dismissed and that they are entitled to an order of possession for the rental unit based on issuance of the Two Month Notice. The Tenant called into the hearing a moment later and she was informed that the hearing had concluded.

The Tenant stated that her tenancy cannot end due to the covid emergency order and she stated that evictions are not permitted.

I explained to the Tenant that the emergency order is effective March 30, 2020 and the order provides that Landlords are not permitted to issue any notices to end tenancy while the emergency order is in effect.

I informed the Tenant that notices to end tenancy issued prior to March 30, 2020 are not affected by the emergency order and that hearings to cancel or enforce notices issued prior to March 30, 2020 may proceed.

I informed the Tenant that she has disputed a Two Month Notice to End Tenancy for Landlord Use of Property dated February 28, 2020 and that it is correct to proceed with a dispute of that Notice.

I informed the Tenant that if her application to cancel the Two Month Notice is dismissed, it is correct under the legislation to issue the Landlord an order of possession for the rental unit.

Despite my repeated attempts to explain to the Tenant the details I have provided above, the Tenant did not appear to understand how it is possible that her tenancy could end during the covid pandemic.

Preliminary and Procedural Issues

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the Two Month Notice to End Tenancy for Landlord Use of Property dated February 28, 2020. The remaining claims from the Tenant are dismissed with leave to reapply.

Issues to be Decided

- Did the Tenant dispute the Two Month Notice within the legislated time period?

Background and Evidence

The Landlords testified that the tenancy began approximately three years prior and is on a month to month basis. Rent in the amount of \$950.00 is to be paid to the Landlords by the first day of each month. The Tenant paid the Landlords a \$450.00 security deposit.

The Landlord, Mr. H.D. testified that on February 28, 2020 he personally served the Tenant with the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2020. The Two Month Notice has an effective date of May 1, 2020.

The Two Month Notice contains one reason for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The Tenant disputed the Two Month Notice by applying for Dispute Resolution on April 15, 2020. The Tenant's application indicates she received the Two Month Notice on March 1, 2020. The Tenant's application did not include a request for more time to dispute a notice to end tenancy.

The Landlord requested an order of possession for the rental unit. The Landlord testified that the Tenant has not paid all the rent owing under the tenancy agreement for June 2020.

The Tenant confirmed that June rent was not fully paid as she stated that she can make arrangements to pay the remaining June 2020 rent after the hearing.

Analysis

Section 49 (8) of the Act provides that a tenant may dispute a Two Month Notice by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Section 49 (9) of the Act provides that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after receiving the notice, 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.

Section 66 (1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances.

Based on the evidence before me and on a balance of probabilities I make the following findings:

The Tenant did not apply for more time to dispute a notice to end tenancy.

I find that the Tenant received the Two Month Notice on March 1, 2020 and applied to dispute the Notice 45 days later, on April 15, 2020. The Tenant did not dispute the Two Month Notice within 15 days of receiving it. The Tenants belief that the Landlord could not end the tenancy by issuing a notice to end tenancy was incorrect. The emergency order was not issued until March 30, 2020, twenty-nine days after the Tenant received the Two Month Notice. The Tenant did not apply for more time to dispute the notice and there are no exceptional circumstances present to permit the Tenant to have an additional 30 days to dispute the Two Month Notice.

The Tenants application to cancel the Two Month Notice is late and is dismissed. I find that the Tenant is conclusively presumed under the legislation to have accepted that the tenancy ended on May 1, 2020, the effective date of the Two Month Notice.

Section 55 (1) of the Act provides that 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 Two Month Notice complies with the requirements of form and content.

Since the rent owing for June 2020 is not fully paid, I grant the Landlords an order of possession for the rental unit effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2020, was made 30 days late. The Tenant is conclusively presumed under the legislation to have accepted that the tenancy ended

on May 1, 2020, the effective date of the Two Month Notice. The Tenant's application is dismissed. The tenancy is ending.

I grant the Landlord an order of possession for the rental unit under section 55 of the Act effective two (2) days after service on the Tenant.

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order provides that while the Order is in effect a Landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the Act.

The Tenant has leave to reapply for dispute resolution to hear the claims that were severed.

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: June 02, 2020

Residential Tenancy Branch