



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL-MT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to allow a tenant more time to make an application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 21, 2021 (2 Month Notice) and to cancel the 2 Month Notice.

The tenant and an advocate for the tenant, NA (advocate), the landlord and an agent for the landlord, NP (agent) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing.

While the landlord denied having been served with the application, I am satisfied that the registered mail evidence before me supports that the landlords were served on March 19, 2021 by registered mail and that the documents were mailed on March 18, 2021. The registered mail tracking information has been included on the style of cause for ease of reference. In addition, the landlord confirmed they were sent the hearing information by text with the access codes and date of the hearing. As a result, I am satisfied that the landlord was served sufficiently under the Act. The hearing proceeded as a result. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the

hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. I will deal with any orders later in this decision, if applicable.

As the filing fee was waived, I will not address the filing fee further in this decision.

Issues to be Decided

- Is the tenant entitled to more time to make an application to cancel a 2 Month Notice?
- If yes, should the 2 Month Notice be cancelled?

Background and Evidence

The tenant testified that they received the 2 Month Notice dated February 21, 2021 on the same day, February 21, 2021. The tenant did not file to dispute the 2 Month Notice until March 10, 2021. When the tenant was asked why they waited so long to dispute the 2 Month Notice, the tenant stated they did not know what to do.

The tenant could not explain why they did not read the instructions on the 2 Month Notice which sets out there is a deadline of 15 days to dispute the 2 Month Notice.

Analysis

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

Tenant's request to allow more time to make an application to cancel the 2 Month Notice - Section 66(1) of the Act applies and states:

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]*.

[Emphasis added]

In the matter before me, I find the tenant has failed to provide sufficient evidence to support that any exceptional circumstances existed to support why the tenant waited beyond the statutory deadline of 15 days to dispute a 2 Month Notice. Sections 49(8) and 49(9) of the Act apply and state:

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

(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.

[Emphasis added]

Pursuant to sections 49(8) and 49(9) of the Act, I find the tenant failed to dispute the 2 Month Notice within 15 days of February 21, 2021, which would have been no later than Monday, March 8, 2021. Instead, the tenant waited until Wednesday, March 10, 2021 before filing their application. Therefore, pursuant to section 49(9) of the Act, I find the tenant is conclusively presumed to have accepted the 2 Month Notice and that the tenancy ended on **April 30, 2021**, as section 53 states that effective vacancy dates automatically correct under the Act, and therefore I find the corrected effective vacancy date is April 30, 2021.

Therefore, **I dismiss** the tenant's application in full, without leave to reapply, as the tenant failed to provide sufficient evidence to support an extension of time to make their application and that the 2 Month Notice I find complies with section 52 of the Act and the tenancy ends based on that lawful notice.

While the advocate requested an extension for the order of possession, the landlord did not agree to an extension. Section 55(1) of the Act states:

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.

[Emphasis added]

Given the above and the fact that I find the 2 Month Notice complies with section 52 of the Act as stated above, I grant the landlord an order of possession effective **June 30, 2021 at 1:00 p.m.** This date was used as the parties agreed that money has been paid by the tenant to occupy the rental unit for June 2021.

Conclusion

The tenant's application fails and is dismissed in full due to insufficient evidence, without leave to reapply. The tenancy ended on April 30, 2021.

The landlord is granted an order of possession effective June 30, 2021 at 1:00 p.m. which must be served upon the tenant. Should the landlord require enforcement of the order of possession, the landlord may file the order of possession in the Supreme Court. The tenant is cautioned that they can be held liable for all costs related to enforcing the order of possession. This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenant.

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: June 18, 2021

Residential Tenancy Branch