



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNQ-MT

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 a Notice to end tenancy and to cancel a Two-Month Notice to End Tenancy Issued Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Notice”) dated March 17, 2021. The matter was set for a conference call.

The two Agents for the Landlord, one of the Tenants and the Tenant’s Advocate (the “Tenants”) 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. At the outset of these proceedings, the parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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 – Advocates Conduct/Recording Hearings

During these proceedings, when this Arbitrator attempted to verbally deliver their ruling regarding the Tenants’ request for more time to file to dispute the Notice to End Tenancy, at approximately 25 minutes into the testimony of these parties, the Tenant’s Advocate interrupted these proceedings, stating that regardless of the rules prohibiting recording proceedings that they were, in fact, recording these proceedings and demanded to know this Arbitrators name.

The Tenant's Advocate was advised, for a second time, that recording proceedings was prohibited, and they were asked to stop recording and provided with the last name of this Arbitrator. The Tenant's Advocate began speaking loudly over the top of this Arbitrator, preventing this Arbitrator from conducting these proceedings in accordance with the Residential Tenancy Branches Rules of Procedure.

The Tenant's Advocate continued to disrupt these proceedings and refused to stop their recording. The Tenant's Advocate was advised that due to their breach of the Residential Tenancy Branches Rules of Procedure for these proceedings, that their conduct and actions would be reported to the Residential Tenancy Branch's Compliance Department and that they were being removed from the hearing. The Tenant's Advocate was disconnected from these proceedings at 1:56 p.m.

Due to concerns regarding the Tenant's Advocate's recording of these proceedings which are in breach section 6.11 of the Residential Tenancy Branch's Rules of Procedure, a copy of this decision has been forwarded to a Residential Tenancy Branch Manager. The Manager will review this decision, and if they are of the opinion that these circumstances could reasonably lead to an investigation and consideration for administrative penalties, then they will send a copy of this decision along with any other relevant materials to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither this Arbitrator nor the Residential Tenancy Branch Manager will play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide this Arbitrator or the Residential Tenancy Branch Manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of this decision, they can also consider additional evidence that was not before this Arbitrator during these proceedings. They are not bound by the findings of fact I have made in this decision.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Issues to be Decided

- Is the Tenant entitled to more time to file to cancel the Notice?
- Should the Notice dated March 17, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that they received the Notice to end tenancy, dated March 17, 2021, from their mailbox on April 22, 2021. The Tenant testified that due to the covid-19 pandemic, they went several days/weeks without picking up their mail as they were concerned about possible exposure to the illness in the common mailbox area of the rental property.

The Tenant was asked to explain the reason they had applied for more time to dispute the Notice; the Tenant testified that they had not disputed the Notice right away, in the hope that they could negotiate a solution with the Landlord to resolve the issue but that when they could not resolve the issue, they filed to dispute the Notice with the Residential Tenancy Branch.

The Landlord testified that they did not agree that the Tenant's should be granted their request for an extension of time to file to dispute the Notice to end tenancy.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 49.1 of the *Act* requires that upon receipt of a Notice to End Tenancy issued because the tenant ceases to qualify for the rental unit, a tenant must, within fifteen days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively

presumed to have accepted that the tenancy will end on the effective date of the Notice under section 49.1(6).

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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.

As the Landlord could not provide testimony regarding the method of service of this Notice, I accept the Tenants' testimony that they received this Notice to end the tenancy on April 22, 2021. Pursuant to section 49(5) of the *Act*, the Tenant had 15 days to dispute the Notice. Accordingly, the Tenants had until May 7, 2021, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed to dispute the Notice on May 10, 2021, which is outside the statutory time limit.

The Tenants have also requested additional time to file to dispute the Notice, pursuant to section 66 of the *Act*. Section 66 of the *Act* states that an extension of time may only be granted if the party requesting the extension has proven 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].*

In this case, the Tenants testified that they did not dispute the Notice within the legislated timeline as they were attempting to negotiate with the Landlord in order to have the issue resolved and the Notice withdraw. I have reviewed the Notice to end tenancy submitted into evidence by the Tenant, and I noted that page one of the Notice clearly states that if the tenant does not dispute the Notice within 15 days, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date

of the Notice. I find that the information advising the Tenant of how to dispute the notice and the consequences for not disputing the notice within the required timeline had been clearly provided to the Tenants.

I find that the Tenants' testimony of their attempts to negotiate with the Landlord to be insufficient evidence of an exceptional circumstance under section 66 of the *Act*. Therefore, I find that the Tenants have failed to prove exceptional circumstance sufficient to be awarded additional time to file to dispute the Notice. Consequently, I must dismiss the Tenants' request for more time to dispute the Notice, pursuant to section 66 of the *Act*.

As the Tenants failed in their application for more time to dispute the Notice, and the Tenants failed to dispute the Notice within the statutory time limit. I find that the Tenants are conclusively presumed to have excepted the Notice and that this tenancy would end in accordance with that Notice. Therefore, I must dismiss the Tenants' application, and I find the Notice dated March 17, 2021, is valid and enforceable.

Section 55(1) 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's application to dispute the notice has been dismissed.

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.*

As the Tenants' application to cancel the Notice has been dismissed, the Landlord is therefore entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I grant the Landlord an Order of Possession effective **two days** after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, 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 Tenant.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenants. 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: September 17, 2021

Residential Tenancy Branch