



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Tenant	910037548	CNR-MT, MNDCT, OLC, LRE, FFT
Landlord	310044514	OPL, FFL

Introduction

This hearing dealt with cross-applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

TENANTS' CLAIMS

The Tenant applied for:

- More time to apply to cancel the notice;
- An Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated May 20, 2021;
- A monetary order for damage or compensation under the Act of \$285.00;
- An Order for the Landlord to Comply with the Act or tenancy agreement;
- To suspend or restrict the Landlord's right to enter; and
- To recover the \$100.00 cost of their Application filing fee.

LANDLORDS' CLAIMS

The Landlords applied for:

- an Order of Possession, further to having served a Two Month Notice to End Tenancy for Landlord's Use dated July 10, 2021 ("Two Month Notice"); and
- to recover the \$100.00 cost of their Application filing fee.

The Tenant, the Landlord, G.G., and an agent for the Landlord, H.G. (the “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. One witness for the Landlord, S.L., was also present and provided affirmed testimony.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and 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.

The Tenant said that he served the Landlord with his Notice of Hearing documents and his evidence by registered mail on May 27, 2021. The Tenant provided the registered mail tracking number, as proof of service. The Landlord confirmed that he had received these documents from the Tenant and had reviewed them prior to the hearing.

The Agent said that he served the Tenant with the Landlord’s Notice of Hearing documents and evidence by posting it on the door on July 28, 2021. The Agent submitted photographs showing these documents posted on a door that the Tenant confirmed was his; however, when I enlarged the photographs of these documents after the hearing, I determined that they were for the Two Month Notice, not the Notice of Hearing documents.

The Tenant denied that he received the Notice of Hearing documents; therefore, I have opposing evidence from the Parties in this regard. I advised the Tenant to let me know if the Landlord presented any evidence that he had not received; however, the Tenant did not identify any such evidence in what the Landlord or the Agent presented in the hearing. As a result, and on a balance of probabilities, I find it appropriate to consider the Landlord’s evidence presented in the hearing, but not the other evidence the Landlord submitted to the RTB, in case the Tenant had not received that.

Preliminary Matters

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated various, unrelated matters of dispute on his application, the most urgent of which is his application to set aside a 10 Day Notice. I find that not all the claims on the Tenant’s application are sufficiently

related to be determined during this proceeding. I will, therefore, only consider the Tenant's request for more time to cancel the 10 Day Notice, as well as his claim to set aside the 10 Day Notice, and the recovery of his \$100.00 Application filing fee at this proceeding. Accordingly, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel an eviction notice.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and if I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is either Party entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2016, between the Tenant and a previous landlord. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$700.00, due on the first day of each month. The Tenant said that he paid his original landlord a security deposit of \$350.00, and no pet damage deposit. The Landlord said that he would contact the previous landlord about the Tenant's security deposit.

I have reviewed the Landlord's claims first, as the result affects the relevance of the Tenant's claims.

The Agent submitted a copy of the Two Month Notice. He said the Tenant was served with the Two Month Notice that was signed and dated July 10, 2021. This Two Month Notice has the rental unit address, and it was served by attaching it to the rental unit door on July 28, 2021; it has an effective vacancy date of October 1, 2021. As noted above, the Landlord provided photographs of the Two Month Notice on a door that the

Tenant confirmed was his. However, the Tenant denied that he had received this Two Month Notice; he said if he had received it, he would have immediately gone to a Service BC office to dispute it.

The grounds set out on the Two Month Notice were that the rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse). The Agent confirmed that he, the Landlord's son, planned to move into the rental unit. The Tenant denied having received the Two Month Notice, which is why he said he did not apply to dispute this eviction notice.

The Tenant suggested that the Landlord posted the Two Month Notice on his door, took the photographs of them, and then removed the Two Month Notice. I asked the Tenant why the Landlord would do this, rather than serving the Notice, and he said he did not know. I asked the Tenant if he had any proof to support his suggestion, and he said he did not.

When I consider all of the evidence before me in this regard, I find on a balance of probabilities that it is more likely than not that the Agent served the Tenant with the Two Month Notice, as he stated.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Two Month Notice on July 13, 2021, three days after it was posted to the door of the rental unit, pursuant to section 90 of the Act.

Section 49 (9) of the Act states that if a tenant who has received a two month notice does not apply for dispute resolution within 15 days after the date the tenant receives 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.

As there is no evidence before me that the Tenant disputed the Two Month Notice, I find that he is conclusively presumed under section 49 (9) of the Act to have accepted the Two Month Notice, and I find that the tenancy, therefore, ends on October 1, 2021. As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act. The Order of Possession will be effective on October 1, 2021 at 1:00 p.m.

I also find that the Landlords are entitled to recovery of the \$100.00 application filing fee, pursuant to section 72 of the Act. I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$350.00 in complete satisfaction of the Landlords' monetary award.

As I have found that the tenancy ends as a result of the Two Month Notice, I find that the Tenant's claims are no longer relevant, and I dismiss them without leave to reapply.

Conclusion

The Landlords' claim for an order of possession is successful, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities to establish this claim. I also award the Landlords recovery of the **\$100.00** Application filing fee, which they are authorized to retain from the Tenant's security deposit.

Pursuant to sections 49 and 55 of the Act, I grant an **Order of Possession** to the Landlords effective on October 1, 2021 at 1:00 p.m., **after service of this Order** on the Tenant. 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 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: September 21, 2021

Residential Tenancy Branch