



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Southvan Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ-MT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the “Act”), I was designated to hear an application regarding a tenancy. The Tenant applied for:

- cancellation of a Two Month Notice To End Tenancy Because Tenant does not Qualify for Subsidized Rental Unit dated April 26, 2021 (the “Two Month Notice”) pursuant to section 49.1; and
- an extension of the timeline for disputing the Two Month Notice, pursuant to section 66.

Both parties attended the hearing. The Landlord’s agent (the “Landlord”) testified on behalf of the Landlord. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Notice of Dispute Resolution Proceeding (NDRP) was made available to the Tenant on July 15, 2021. The Tenant testified they served the Landlord with the NDRP on July 16, 2021 by registered mail, and provided the tracking number. The Landlord confirmed receipt of the NDRP on or about July 18, 2021. I find the Tenant served the NDRP on the Landlord in accordance with section 89 of the Act. The Landlord testified they served their responsive evidence on the Tenant on October 4, 2021 by posting it on the Tenant’s door; the Tenant confirmed they received the Landlord’s evidence. I find the Landlord served their evidence on the Tenant in accordance with section 89 of the Act.

I note that section 55 of the Act requires that if a tenant makes an application to dispute a landlord’s notice to end a tenancy, I must grant the landlord an order of possession if

the tenant's application is dismissed or the landlord's notice is upheld, and the landlord's notice complies with the Act.

Issues to be Decided

- 1) Is the Tenant entitled to an extension of the timeline to dispute the Two Month Notice?
- 2) If the extension is granted, should the Two Month Notice be cancelled?
- 3) If the Tenant's application is dismissed, is the Landlord entitled to an order of possession?

Background and Evidence

The parties agree this periodic tenancy began on December 31, 2004; rent is \$628.00, due on the first of the month; and the Tenant paid a security deposit of \$175.00, which the Landlord still holds.

The Landlord testified they served the Tenant with the Two Month Notice on April 26, 2021 by posting it on the door. The Tenant believes they received the Two Month Notice on April 27, 2021. The Tenant submitted this application on June 25, 2021 and continues to occupy the rental unit.

The Tenant stated they required more time to dispute the Two Month Notice as they have disabilities and have been unwell with irritable bowel syndrome, arthritis, cardiomyopathy, fatigue, and medication interactions and side effects. The Tenant explained that the pandemic eliminated their access to the cardio rehabilitation program and aquafit sessions they relied on. The Tenant also provided testimony around confusion as to the filing date of their tax return, and difficulty they had getting through to government offices to clarify the matter. The Tenant's advocate stated that due to these challenges, the Tenant was not able to access advocacy in time to dispute the Two Month Notice by the deadline.

The Tenant submitted a copy of the Two Month Notice as evidence; it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. The reason indicated for the Two Month Notice is: "The tenant no longer qualifies for the subsidized rental unit."

The Landlord stated they are seeking an order of possession effective November 30, 2021.

Analysis

I find the Landlord served the Tenant the Two Month Notice on April 26, 2021 in accordance with section 88 of the Act, and the Tenant received it on April 27, 2021.

I find the Two Month Notice meets the form and content requirements of section 52.

In their testimony, the Tenant described many circumstances I acknowledge as very challenging. However, my decision regarding whether they are entitled to more time to dispute the Two Month Notice must be governed by the Act, which at section 66 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]*.

The Residential Tenancy Branch [Policy Guideline 36, Extending a Time Period](#), provides guidance on the Act's intention regarding "exceptional circumstances"; it states: "The word 'exceptional' implies that the reason for failing to do something at the time required is very strong and compelling." As an example of what might be considered an exceptional circumstance, the guideline cites a situation in which the party was in the hospital at all material times, stating:

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

Considering the Act and the Policy Guideline, I must determine that the reasons provided by the Tenant are not sufficient to meet the high bar required, and I therefore cannot grant the Tenant more time to apply to dispute the Two Month Notice.

Sections 49.1 (5) and (6) of the Act state:

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

49.1

...

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(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 Two Month Notice was received by the Tenant on April 27, the application deadline was 15 days later: May 12, 2021. However, the Tenant applied to cancel the Two Month Notice on June 25, 2021. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on June 30, 2021, the effective date of the notice, and the Landlord is entitled to an order of possession.

Conclusion

I dismiss the Tenant's application for additional time to dispute the Two Month Notice, without leave to reapply. The Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Two Month Notice. The Two Month Notice is upheld.

I hereby grant the Landlord an order of possession, which must be served on the Tenant in accordance with the Act and which is effective November 30, 2021. This order may be filed in, 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: October 25, 2021

Residential Tenancy Branch