



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenants seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 22, 2021 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

The tenants were provided with a copy of the Notice of a Dispute Resolution Proceeding dated July 19, 2021 (Notice of Hearing) when they made their application. The tenants, however, did not attend the hearing set for October 29, 2021 at 11:00 a.m. Pacific Standard Time. The phone line remained open for 23 minutes and was monitored throughout this time. The only person to call into the hearing was landlord, KT (landlord).

Preliminary and Procedural Matters

The landlord was 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 landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was 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. The landlord did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issue to be Decided

Should the tenants' application be dismissed for failing to attend the hearing and an order of possession be granted to the landlord?

Background and Evidence

The landlord referred to the tenancy agreement submitted in evidence. A fixed-term tenancy began on April 1, 2021 and was scheduled to revert to a month-to-month tenancy as of May 1, 2022.

The landlord served the tenants with the 2 Month Notice and the tenants failed to attend this hearing to present the merits of their application. The landlord testified that their daughter will be occupying the rental unit.

The effective vacancy date is listed as August 31, 2021.

Analysis

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3 apply and state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the above and following the 10-minute waiting period, the application of the tenants was **dismissed without leave to reapply**. This decision does not extend any applicable time limits under the Act.

The filing fee is not granted as the tenants did not attend the hearing.

Section 55(1) of the Act applies and 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]

In addition, section 53 of the Act applies and states:

Incorrect effective dates automatically changed

53(1) **If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.**

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period. [emphasis added]

Given that the matter before me involved a fixed-term tenancy that does not revert to a month-to-month tenancy **until May 1, 2022**, I find the effective vacancy date automatically corrects under section 53 of the Act to May 1, 2022. As a result, I grant the landlord an order of possession **effective May 1, 2022 at 1:00 p.m.**

The tenants are reminded that the tenancy could end earlier than May 1, 2022 if the landlord serves a valid 10 Day Notice for Unpaid Rent or Utilities, or a valid 1 Month Notice to End Tenancy for Cause, etc.

The tenants are cautioned that they could be held liable for all costs related to enforcing the order of possession.

This decision will be emailed to both parties at the email addresses confirmed by the landlord and the email address for the tenants provided in their application.

This decision is final and binding on the parties, except as 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: November 2, 2021

Residential Tenancy Branch