



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, RP, RR, OLC**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on June 28, 2021, to have repairs made to the unit, to be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided and to have the landlord comply with the Act.

Only the landlord’s agent appeared. The landlord’s agent testified that the tenants did not dispute the Notice within the statutory time limit as they were served in person with the Notice on June 29, 2021.

I have reviewed the tenants’ application for dispute resolution, the tenants acknowledged in their application that they received the Notice, in person on June 30, 2021. While I accept there is a discrepancy between the two days; however, even if I accept the tenants’ evidence, I find the tenants did not make their application within the statutory time limit.

The tenants had 10 days to dispute the Notice after it was received even if I accept the tenants’ submission in their application that it was received on June 30, 2021, their last day to dispute Notice was July 10, 2021, which would automatically be extended to July 12, 2021, as the 10th day was a weekend. However, the tenants’ application was not considered filed until July 13, 2021, as that was when the tenants completed their fee waiver application.

Residential Tenancy Branch Rules of Procedures 2.6 states,

Point at which an application is considered to have been made The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application

I find the tenants application was not considered filed until July 13, 2021, which is outside the statutory time limit. I find the tenants did not dispute the Notice within the statutory time limit and did not request more time to be allowed to dispute the Notice in their application for me to consider whether the tenants had an exceptional circumstance for filing late, such as both tenants were hospitalized at the time. Therefore, I find I must dismiss the tenants' application to cancel the Notice without leave to reapply.

As the tenants do not appear to provide any testimony of the remainder issues in their application. I find I must dismiss the tenants' application without leave to reapply

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

I find that the tenants were served with a One Month Notice to End Tenancy for Cause (the "Notice"),

The Notice explains the tenants had ten10 days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenants are presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice.

Although the tenants did file an application to dispute the Notice it was not within the required time limit, even after extending that date to July 12, 2021. The tenants did not apply for more time to dispute the Notice. Nor did the tenants appear.

Analysis

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

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 47 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

Further, I accept the evidence of the landlord that the tenant was served with the Notice in compliance with the service provisions under section 88 of the Act, which the tenant acknowledged service of the Notice in their application.

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy.

The tenant did not apply to dispute the Notice within the statutory time limit, and therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on July 31, 2021.

As the tenants have now failed to pay rent. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants failed to dispute the Notice within the statutory time limit. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession.

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: November 12, 2021