



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNE-MT, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause or End of Employment (the "One Month Notice") pursuant to Sections 47, 48 and 62 of the Act;
2. More time to dispute the notice pursuant to Section 66 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, TJ, and the Tenants, CC and RM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants confirmed that they personally served and emailed the Landlord with the Notice of Dispute Resolution Proceeding package including all evidence for this hearing (the "NoDRP package"). The Tenants could not confirm the date they served the Landlord. The NoDRP package was issued on October 27, 2021. TJ stated he does not dispute receiving the NoDRP package; however, he questions the time period it was served as he believes the Tenants were beyond the 10-day time limit for making an application for dispute resolution. I find that the Landlord was served with the NoDRP

package for this hearing on October 27, 2021, in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's One Month Notice?
2. Are the Tenants entitled to more time to dispute the Landlord's One Month Notice?
3. Are the Tenants entitled to recovery of the application filing fee?
4. If the Tenants fail in their application is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy began on August 14, 2015. Rent in the amount of \$1,110.00 is payable on the first day of each month. The Tenants paid a security deposit of \$500.00 at the beginning of the tenancy of which the Landlord continues to hold in trust.

The Landlord served the Tenants with the One Month Notice via registered mail on September 22, 2021 (the "One Month Notice"). TJ referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenants are repeatedly late paying rent. In the details for Cause, the Landlord wrote, 'Despite numerous reminders sent by text and email, rent has been paid late 6 times in the last 12 months. This includes December 2020, January 2021, April 2021, May 2021, June 2021, and September 2021. The effective date of the One Month Notice was October 31, 2021. The Tenants confirmed receipt of the One Month Notice, but as discussed below, they received it late. As of the date of the hearing, the Tenants still occupy the rental unit.

CC and RM testified that Canada Post placed the One Month Notice in the mailbox for the upstairs tenants. Those tenants would routinely re-deliver CC and RM's mail into their correct mailbox. The upstairs tenants vacated their rental unit on August 31, 2021, and the unit remains empty. CC and RM said they received the One Month Notice three

weeks into October on account that no one lives in the upstairs unit who may have notified them, and they had not checked for mail delivery as they normally use a different pathway into the residential property that does not alert them to check their mailbox. The Landlord said the Tenants were aware of the confusion with mail delivery in the mailboxes for the residential property. The Tenants have not remedied the mail delivery system/location since their move-in.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47(4) of the Act provides that upon receipt of a one month notice to end tenancy for cause, a tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The Landlord's One Month Notice was served via registered mail on September 22, 2021. As the date the One Month Notice package was received by the Tenants is disputed by the Landlord, Section 90(a) of the Act deems a registered mail package served on the fifth day after it is mailed. I find that the Tenants were deemed served with the Landlord's One Month Notice on September 27, 2021.

The Tenants sought, pursuant to Section 66 of the Act, a change to a time limit to apply for dispute resolution. The Tenants testified that there was ongoing confusion with delivery of their mail by Canada Post. The Tenants have resided in the residential property since August 2015, and for some period the Tenants were satisfied to rely on the upstairs tenants to ensure that they received their misdelivered mail. The upstairs tenants vacated their rental unit August 31, 2021, so the Tenants submit that due to this, they received the One Month Notice three weeks into the month of October.

Residential Tenancy Policy Guideline 36 provides guidance to me on how to assess requests for an extension of time, in this case, to apply for dispute resolution. The Tenants did not persuade me that the issue with the mail receipt was an exceptional circumstance. I will follow the guidance from our Policy Guideline 36 which explains that "exceptional" implies that the reason for failing to do something at the time required is

very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said. Mail receipt is very important, but I do not find that the Tenants' reason of mail delivery confusion is valid or persuasive in allowing me to extend the time period whereby they may apply for dispute resolution late.

The Tenants had until October 7, 2021 to make an application for dispute resolution. The Tenants' application for dispute resolution was submitted on October 27, 2021. I find that the Tenants have failed to file an application for dispute resolution within the 10 days of having received the One Month Notice. Accordingly, I find that the Tenants are conclusively presumed under Section 47(5)(a) of the Act to have accepted that the tenancy ended on the effective date of the notice, in this case, October 31, 2021.

Section 55(1) of the Act reads as follows:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on my finding that this tenancy is conclusively presumed to have ended, I order that the Tenant's application for dispute resolution to cancel the One Month Notice is dismissed without leave to re-apply. As the Tenants were not successful in their claim, I do not grant them recovery of the filing fee.

I uphold the Landlord's One Month Notice and grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenants.

Conclusion

The Tenants' application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 8, 2021

Residential Tenancy Branch