



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNL-MT, OLC, LRE, PSF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 20, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 30, 2021 (the “Notice”) and for more time to dispute the Notice
- For an Order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For an Order that the Landlord provide services or facilities required by the tenancy agreement or law
- To recover the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord provided the legal address of the rental unit which is reflected on the front page of this decision.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and request to recover the filing fee and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and confirmed there was no issue with service of the Tenant's evidence.

The only evidence I have from the Landlord before me is a Use and Occupancy Letter. The Landlord testified that they submitted further evidence to the RTB and served this on the Tenant. The Tenant confirmed receipt of the Use and Occupancy Letter and a Two Month Notice issued to the Landlord around January 13, 2022. The Tenant took issue with the timing of service. As explained to the Tenant at the hearing, the Landlord was only required to serve their evidence "not less than seven days before the hearing" pursuant to rule 3.15 of the Rules. I note that the Landlord submitted very minimal evidence for this hearing. I told the Tenant I found no issue with the timing of service of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recover for the filing fee?

Background and Evidence

The parties agreed there is a written tenancy agreement in this matter which started 13 years ago. The Landlord testified that the tenancy is currently a month-to-month tenancy. The Tenant testified that they thought the tenancy was on a yearly basis because they are not interested in leaving. The Tenant did not know what the written tenancy agreement says about the term of the tenancy. The Landlord did not know how much rent is and testified that it is due on the first day of each month. The Landlord did not know how much the security deposit is. The Tenant testified that rent is \$1,161.00

due on the first day of each month. The Tenant did not know how much the security deposit is.

The Notice was submitted. The Notice has an effective date of November 01, 2021. The grounds for the Notice are that the Landlord or Landlord's spouse will occupy the rental unit. The Tenant did not raise any issue with the form or content of the Notice when asked.

The parties agreed the Notice was served on the Tenant, and received by the Tenant, August 30, 2021.

The Application was filed September 20, 2021. The Tenant acknowledged the dispute of the Notice was filed late. The Tenant testified that the dispute was filed late because the Tenant was not well. The Tenant stated that they could provide documentary evidence of this if required.

The Application states as follows in relation to the request for more time to dispute the Notice:

Grieving loss of family members which is also affecting my depression which I'm under treatment for (medicine) bi-polar

The Landlord testified as follows. They intend to move into the rental unit. They were issued a Two Month Notice by their landlord with an effective date of September 30, 2021, and they moved out on this date. They have been living in a camper for the last three months waiting to move back into the rental unit. They do not have anywhere else to live and their family is in the city of the rental unit.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

The Tenant testified as follows. The Notice is not legitimate and the Landlord does not intend to move into the rental unit. The rental unit is a basement suite in a house with two other rental units. The Landlord does not intend to move into the basement suite and it would be a problem for the Landlord to park their vehicle at the rental unit. The Notice was issued so that the Landlord can renovate and re-rent the unit for a higher rent amount. They agree the Landlord was issued a Two Month Notice but they believe there are issues with it because they understood the Landlord to be the owner of the

residence the Landlord was living in. The Notice was issued out of the blue and because the Landlord got upset about the Tenant not fixing things in the rental unit.

In reply, the Landlord denied the Tenant's statements about ulterior motives for issuing the Notice. The Landlord testified that they used to own the place they were living in; however, they sold it and now the new owners want to move in and so issued the Landlord a Two Month Notice. The Landlord confirmed the rental unit is the basement suite of a house with two other units and confirmed that only the Tenant was issued the Notice. The Landlord testified that the other two units in the house are too large for them to live in.

Analysis

I accept that the tenancy is currently a month-to-month tenancy because it would be unusual for a tenancy to be on a year-to-year basis, the Tenant pays rent monthly and the Tenant did not provide compelling evidence that the tenancy is on a year-to-year basis.

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8) of the *Act* states:

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within **15 days** after the date the tenant receives the notice... (emphasis added)

I find the Tenant received the Notice August 30, 2021, because the parties agreed on this.

The dispute of the Notice was filed September 20, 2021, six days late.

Section 66 of the *Act* states:

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]. (emphasis added)

Policy Guideline 36 addresses extending a time period and states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "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.** (emphasis added)

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

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.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The Tenant did not submit any documentary evidence to support their testimony about why they filed the dispute of the Notice late. I do not find the testimony of the Tenant alone sufficiently compelling to extend the timeline for disputing the Notice. The Tenant stated at the hearing that they could provide documentary evidence supporting their testimony if necessary. As is clear from rule 3.1 and 3.14 of the Rules, the Tenant was required to submit all evidence they intended to rely on at the hearing prior to the hearing and were required to serve it on the Landlord. The Tenant cannot submit evidence in support of their position after the hearing has started.

Given the above, I decline to extend the timeline for disputing the Notice.

Section 49(9) of the *Act* states:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

Section 49(9) of the *Act* applies and the Tenant is conclusively presumed to have accepted that the tenancy ended November 01, 2021, the effective date of the Notice. The Tenant was required to vacate the rental unit by November 01, 2021. Given this, the dispute of the Notice is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

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.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 49(7) of the *Act*.

Given the above, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* and is issued an Order of Possession effective two days after service on the Tenant as requested.

The Tenant is not entitled to recover the filing fee given they were not successful on the Application.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that 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: February 02, 2022

Residential Tenancy Branch