



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT, OLC, MNDCT, FFT, LRE**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The Tenants applied for:

- an order for an extension of time to make an application to cancel a Two Month Notice to End Tenancy for Landlord's Own Use dated July 30, 2021 ("2 Month Notice") pursuant to section 66;
- an order for cancellation of the 2 Month Notice pursuant to section 49;
- an order requiring the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") or tenancy agreement pursuant to section 62;
- an order for \$525.00 for compensation for the Tenants' loss or money owed by the Landlord pursuant to section 67;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the Tenants' filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's legal counsel ("SB"), one of the two Tenants ("JS") and the Tenants' advocate ("PS") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JS stated the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding and some of the Tenant's evidence ("NDRP Package") on the Landlord in-person but JS could not recall the date of service. PS acknowledge receipt of NDRP Package sometime in October 2021. I find the Landlord was served with the NDRP Package pursuant to sections 88 and 89 of the Act.

Preliminary Matter – Later Service and Filing of Evidence by Tenant

JS stated the Tenants served additional evidence on the Landlord in-person on January 19, 2022. PS stated the Tenant's additional evidence was received by the Landlord on January 20, 2022. JS did not provide any evidence that the Tenants' additional evidence was not available to be served at least 14 days before the hearing. Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing *must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing*. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

[emphasis added in italics]

JS did not provide any evidence to establish that the Tenants' additional evidence was not available to be served on the Landlord at least 14 clear days before the hearing. I find that the Tenants' additional evidence was not served on the Landlord and the Residential Tenancy Branch ("RTB") in accordance with Rule 3.14. Based on the above, I decline to accept any of the Tenants' evidence for this hearing that was served on the Landlord and filed with the RTB less than 14 days before the hearing.

Preliminary Matter – Late Service and Filing of Landlord's Evidence

The Landlord's evidence was submitted to the RTB on January 26, 2022. JS did not provide any evidence that the Landlord's evidence was not available to be served at least 7 days before the hearing. Rule 3.15 of the RoP) states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single

complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant *and the Residential Tenancy Branch not less than seven days before the hearing*. See also Rules 3.7 and 3.10.

[emphasis added in italics]

JS did not provide any evidence to establish that the Landlord's evidence was not available to be served on the Tenant and filed with the RTB at least 7 days before the hearing. I find that the Tenants' additional evidence was not served on the Landlord and the RTB in accordance with Rule 3.14. Based on the above, I decline to accept any of the Landlord's evidence for this hearing that was served on the Tenant and filed with the RTB less than 7 days before the hearing.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

Rule 2.3 of the RoP states:

2.3 Related issues Claims made in the application must be related to each other.

Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The most important issue in the Tenants' application is to address whether the 2 Month Notice should be cancelled. I find the Tenants' claims for: (i) an order the Landlord comply with the Act, Regulations and/or tenancy agreement; (ii) an order for \$525.00 for compensation for the Tenants' loss or money owed by the Landlord; and (iii) an order suspending or setting conditions on the Landlord's right to enter the rental unit are unrelated to the Tenants' claim for cancellation of the 2 Month Notices should be cancelled and recovery of the filing fee for the Tenants' application from the Landlord. Based on the above I dismiss, with leave to reapply, the Tenants' claims for: (i) an order the Landlord comply with the Act, Regulations and/or tenancy agreement; (ii) an order for \$525.00 for compensation for the Tenants' loss or money owed by the Landlord; and (iii) an order suspending or setting conditions on the Landlord's right to enter the rental.

Issues to be Decided

- Are the Tenants entitled to an extension of time to make their application to seek cancellation of the 2 Month Notice?
- Are the Tenants entitled to cancellation of the 2 Month Notice?
- Are the Tenants entitled to recover the filing fee of their application from the Landlord?
- If the Tenants are not entitled to an extension of time to make their application, or if they are entitled to an extension of time but are not entitled to cancellation of the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The rental unit consist of a mobile home, owned by the Landlord, that is situated on a stratified manufactured home site. PS and JS acknowledged there is a tenancy between the parties for the rental unit, with rent of \$700.00 per month payable on the 1st day of each month. PS stated the Tenants did not pay the security deposit of \$350.00. However, JS stated the Tenants paid the \$350.00 security deposit when the Tenants moved into the rental unit.

PS stated the Landlord is a family corporation and that she is the sole shareholder of the Landlord. PS stated the Landlord served the 2 Month Notice on the Tenants by in-person service on July 30, 2021. JS acknowledged the Tenants received the 2 Month Notice. I find the 10 Day Notice was served on the Tenants in accordance with section 88 of the Act.

PS stated that she served the 2 Month Notice on the Tenants because she intends in good faith to use the rental unit for her own personal use.

JS stated he had been in and out of hospital for one to two weeks at a time and, as a result, he was unable to make an application for dispute resolution to dispute the 2 Month Notice. PS submitted a Certificate of Health that states PS was in hospital from September 12 to 16, 2021. JS stated that PS lives in a mobile home next door to the

Tenant's rental unit. JS testified that, sometime in May 2021, PS went to the rental unit and told JS that the Landlord wanted to raise the rent to \$1,400.00 per month from \$700.00 per month. JS stated the Tenants considered up to \$1,000.00 per month. JS stated that when he went to pay the rent for July 2021, he told her that the Premier of British Columbia announced a moratorium on rent increases until the end of 2021.

JS stated that JS entered the Tenants' rental unit on July 6, 2021, without giving any written notice for access. JS submitted a letter dated July 6, 2021 ("Access Notice") from the Landlord in which the Tenants were notified that the Landlord required access to the rental unit for a "showing". JS stated PS attended at the rental unit with a young couple on July 9, 2021, for the showing. JS stated that the Tenants were then served with the 2 Month Notice. JS stated he believes the reason the Landlord served the Tenants with the 2 Month Notice is because JS remains friends with PS's ex-husband. JS stated that PS saw him with the girlfriend of PS's ex-husband.

JS stated that he did not know whether the Landlord had sold the rental unit or that PS or a spouse, child or parent of PS would be moving into the rental unit pursuant to the 2 Month Notice. JS stated that, when the Tenants were initially served with the 2 Month Notice, they did not dispute the Notice because they thought the Landlord had sold the rental unit and the Tenants thought they would wait to see if the purchaser would require them to vacate the rental unit.

PS stated that, after she had served the Tenant with the Access Notice, she reconsidered her plan to sell the rental unit and decided that she wanted the rental unit for her own use. SB acknowledged the form of the 2 Month Notice used by the Landlord did not comply with the requirements of the Act as the Landlord had used an old form. SB stated the Landlord denied JS's uncorroborated allegations that the Landlord had an ulterior motive for ending the tenancy based on the Tenants remaining friends with PS's ex-husband. SB stated that the Tenants had the opportunity of making an application to dispute the 2 Month Notice within the 15-day dispute period rather than waiting for more than one month to do so. SB submitted that I should amend the 2 Month Notice to deem that Notice to read that a person owning voting shares in the Landlord intended to occupy the rental unit.

Analysis

Sections 49(1), 49(2), 49(4), 49(7), 49(8) and 49(9) of the Act state in part:

49(1) In this section:

[...]

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) 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, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close

family member of that person, intends in good faith to occupy the rental unit.

- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (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, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
- (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.*

[emphasis in italics added]

Based on the testimony of PS, the 2 Month Notice was served on JS in-person on July 30, 2021. Pursuant to section 49(8) of the Act, the Tenants had until August 16, 2021, being the next business day after the end of the 15-day dispute period, to make their application for dispute resolution to dispute the 2 Month Notice. JS admitted he did not dispute the 2 Month Notice by August 16, 2021, and the Tenants have not moved out of the rental unit as of the date of this hearing. The records of the RTB disclose the Tenants' application was made on September 21, 2021. The effective date for move-out stated in the 2 Month Notice was September 30, 2021.

The Tenants requested an extension of time to make their application that was made on October 25, 2021. 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]*.
- (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:
- (a) the extension is agreed to by the landlord;
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*

[emphasis in italics added]

Residential Tenancy Policy Guideline 36 ("PG 36") provides guidance on determining whether there have been "exceptional" circumstances within the meaning of section 66 of the Act. PG 36 states in part:

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.

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.

I find the Tenants' claim for an extension of time to dispute the 2 Month Notice was made before the effective date of the 2 Month Notice and the requirement of section 66(3) is satisfied. JS stated that was in and out of hospital but he only provided a Certificate of Health that stated he was in hospital for September 12, to 16, 2021. JS did not provide any evidence that he was unable to making his application from the date it was served by the Landlord on July 30, 2021 to August 16, 2021. Furthermore, there was no evidence the other Tenant was unable to make an application for dispute resolution within the 15-day dispute period. I find the Tenants have not provided sufficient evidence to demonstrate that exceptional circumstances prevented the Tenants from making an application for dispute resolution to dispute the 2 Month Notice within the 15-day dispute period. Based on the above, I dismiss the Tenants' request for an extension of time to dispute the 2 Month Notice.

The Tenants did not make an application for dispute resolution to dispute the 2 Month Notice during the dispute period permitted by section 49(8) of the Act and I have dismissed the Tenants' claim for an extension of time to dispute the 2 Month Notice. Based on the above, pursuant to section 49(9) of the Act, the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the notice which was deemed to be September 30, 2021. I dismiss the Tenant's application. As the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 2 Month Notice and vacate the rental unit by that date, I am not required to consider whether the Landlord had cause to end the tenancy pursuant to the 2 Month Notice.

I must now determine if the Landlord is entitled to an Order of Possession. 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 First 10 Day Notice and find it is on an old form of RTB-32. The current form of 2 Month Notice prescribed by the director now requires the landlord to indicate whether:

- the rental unit will be occupied by the landlord, or landlord's close family
- if the rental unit will be occupied by the landlord's close family member, then to indicate whether the family member is the landlord's spouse, the child of the landlord or landlord's spouse or the father or mother of the landlord or landlord's spouse;
- the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit; or
- all of the condition of the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

SB submitted that I should amend the 2 Month Notice. Section 68 of the Act states:

- 68(1)** If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
- (a) *the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) *in the circumstances, it is reasonable to amend the notice.*

- (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.

[emphasis in italics added]

JS testified he received a notice from the Landlord dated July 6, 2021, in which the Tenant was advised that there would be a showing of the rental unit on July 9, 2021. JS stated PS came with a young couple on July 9, 2021, to show them the rental unit. PS did not deny this testimony of JS. However, the 2 Month Notice served on the Tenants stated the reason for ending the tenancy was the rental unit would be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse). I find the Tenants did not know, or should have know, this information that was omitted from the 2 Month Notice. This potentially impacted the Tenants' ability to understand and respond to the 2 Month Notice. Based on the above, I do not find it would be reasonable to amend the 2 Month Notice. Based on the above, I find the 2 Month Notice does not meet the form and content requirements under section 52 of the Act. As such, the Landlord is not entitled to an Order of Possession under section 55 of the Act.

I have made no findings on the merits of the 2 Month Notice, and if the Landlord wishes to pursue eviction, it is entitled to issue a new Notice, such that it complies with section 52 of the Act.

As the Tenants were unsuccessful in their Application, I dismiss, without leave to reapply, their claim for reimbursement of their filing fee from the Landlord.

Conclusion

I dismiss the Tenants' claim for an extension of time to make an application to seek an order cancelling the 2 Month Notice.

The Landlord is not entitled to an Order of Possession pursuant to section 55(1) of the Act as the 2 Month Notice does not comply with the form and content requirements of section 52 of the Act.

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: February 13, 2022

Residential Tenancy Branch