



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MT OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 3, 2022. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were present at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

No issues were raised with respect to service of the documentary evidence.

The Tenant filed two applications, both of which were set to be heard at this hearing. The first application was filed to dispute a 2 Month Notice to End Tenancy for Landlord's Use (the Notice) issued at the end of November 2021. The related file number for this first application is the first of the file numbers listed on the cover page to this Decision. The Tenant stated that she mismanaged her email and her files, and didn't serve the Landlord with the Notice of Dispute Resolution (which was sent to her by the RTB via email) for her first application. The Tenant stated that she decided to abandon this first file, and re-file her application under a second file number.

Since the Tenant failed to serve the Landlord with the Notice of Dispute Resolution Proceeding for her first application, I find she has not complied with the service requirements under the Act, and the Rules, which state she must serve copies of these documents to the respondent in order to proceed with the application and the hearing. I dismiss the Tenant's first application, as she failed to serve the Notice of Dispute

Resolution Proceeding for that application and also because she specifically stated she chose to abandon that application.

The Tenant filed her second application on December 23, 2021, for the following:

- I want to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property and I need more time to dispute this notice
- I want the landlord to comply with the Act, regulation and/or the tenancy agreement

The Landlord acknowledged receiving the Notice of Dispute Resolution for the Tenant's second application around January 5, 2022.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

As stated above, the Tenant's first application is dismissed. With respect to the Tenant's second application. The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in the second application deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss the Tenant's request for an order that the Landlord comply with the Act. The only remaining ground to proceed on and discuss is the following ground:

- I want to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property and I need more time to dispute this notice

Issues to be Decided

- Should the Tenant be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

I note the Tenant has applied for more time to make her application to cancel the Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application or the merits of the Notice.

During the hearing, the Tenants stated that she received the Notice on November 28, 2021. A copy of the Notice was provided into evidence, which lists the following grounds for ending the tenancy:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will 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).

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

Section 49 of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. As the Tenant received the Notice on November 28, 2021, she had until December 13, 2021, to dispute the Notice.

After reviewing the file, I note that the Tenant's first application was made on time. However, that application was abandoned by the Tenant, after she failed to serve the required documentation to the respondent. The Tenant abandoned her first application and she did not serve the required documentation for that hearing, which is equivalent to not filing the application at all. As such, the relevant timelines for this application pertain to the Tenant's second application to cancel the Notice. The Tenant filed this application with the Residential Tenancy Branch on December 23, 2021, seeking to cancel the Notice to End Tenancy they received. In this case, the Tenant did not apply

within the allowable 15-day window, which lapsed on December 13, 2021. The Tenant was significantly over the allowable time frame to dispute the Notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is **very strong** and **compelling**.

During the hearing, the Tenant explained that she mismanaged the hearing documentation that was sent to her by the RTB via email, which caused her to miss the window of time she had to serve the hearing documents for her first application. Given she mismanaged the documentation, she decided to abandon that application, and file this second application (late). I accept that the Tenant mismanaged her hearing documentation and communications and that this led to her late application. However, I am not satisfied that these circumstances are exceptional, such that it warrants extra time to file an application for review.

As a result, I find that the Tenant is not entitled to more time to make this Application to cancel the Notice and her late Application is therefore dismissed.

As the Tenant’s Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant’s application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

Since the Tenant was not successful with her application, I decline to award her recovery of the filing fee.

Conclusion

The Tenants' request for more time to make an application to cancel the Notice is dismissed. Further, the Tenants' application to cancel the Notice is also dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced 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 *Residential Tenancy Act*.

Dated: February 03, 2022

Residential Tenancy Branch