



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayview Strata Services Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP 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 April 11, 2022. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

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

Neither the Landlord nor the Tenant raised any issues with respect to service of the Notice of Hearing, or the documentary evidence each party was relying upon during the hearing. Both sides confirmed they had copies of each other's documentary evidence.

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

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number 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 deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause (the Notice)

Issues(s) to be Decided

- Did the Tenant apply on time to dispute the Notice?
- Is the tenant entitled to have the landlord's Notice cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The Landlord issued the Notice for several reasons and both parties spoke to many of the issues underlying the Notice. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether the tenancy will end or continue, based on the Notice.

The Landlord testified that the Notice was sent to the Tenant by registered mail on December 22, 2021. The Landlord provided a receipt showing the packages was sent on this date, as well as the tracking number. However, the Landlord did not provide any printout or explanation regarding when the item was actually delivered. The Tenant was asked when she received the Notice, and although she acknowledged receiving the Notice, she could not recall when it was delivered to her.

The Notice indicates that the reason for ending the tenancy is as follows:

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under the details of cause section, the Landlord spoke to numerous issues with repairs and damage to the unit, which the Tenant has directly caused (and not fixed).

The Tenant applied to dispute the Notice on January 12, 2022. The Tenant did not apply for more time to make an application to dispute this Notice.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. 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.

Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt, or deemed receipt, to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 47(5) of the *Act*.

In this case, the Tenant stated she did not recall when she received the Notice, and provided vague and unclear responses to questions on this point. I note there is a lack of clarity on this matter, and there is also a lack of evidence showing when this package was delivered by Canada Post. The Landlord only provided a tracking number but no printout of when the delivery took place. In order to determine when the Notice was received by the Tenant, I turn to section 88 and 90 of the *Act*, which specify that documents sent by registered mail are deemed to be received 5 days after they are sent. The receipt provided by the Landlord shows this Notice was sent on December 22, 2021. Pursuant to section 90 of the *Act*, I find the Tenant is deemed to have received the Notice on December 27, 2021, the fifth day after it was sent by registered mail.

The tenant had 10 days, until January 6, 2022, to dispute the Notice, but he did not do so until January 12, 2022. Further, the Tenant did not apply for more time to make an application to dispute this Notice, nor did she explain that there were any exceptional circumstances surrounding the receipt of this mail, or her subsequent application to cancel the Notice.

Given that the Tenant applied well beyond the 10 days permitted under the *Act*, without any explanation as to why, and pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice, January 30, 2022.

The Landlord is entitled to an order of possession, which will be effective **two days after service** on the tenant.

Conclusion

The Tenant did not apply on time to dispute the Notice and her application is 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 tenants fail 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: April 11, 2022

Residential Tenancy Branch