



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT, CNR, MNDCT, RP, RR, LRE, PSF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on May 17, 2022. The Tenants 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. Both parties confirmed receipt of each other's documentary evidence. However, the Tenants stated that they did not serve the Landlord with their amendment that they filed with the RTB on March 22, 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

The Tenants 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 all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- More time to make an application to cancel the Notice to End Tenancy.
- to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property
- to cancel the 10 Day Notices to End Tenancy for Unpaid Rent

Issues to be Decided

- Should the Tenants be allowed more time to make an application to cancel the 2-Month Notice?
- Should the 2-Month Notice be cancelled?
- Should the 10 Day Notices be cancelled?

Background, Evidence, and Analysis

I note the Tenants have applied for more time to make an application to cancel the 2-Month Notice. Given that the Tenants applied late, I find the Tenants' request to have more time to apply to cancel the 2-Month Notice must be addressed before considering the remainder of the application.

During the hearing, the Tenants stated that they received the 2-Month Notice on October 30, 2021, by text message. However, the Tenants were unclear as to what exactly was received. The Landlord clarified that he never sent the 2 Month Notice by text but he sent the 2 Month Notice to the Tenants at the rental unit via Xpresspost, with signature required, on October 25, 2021. Proof of mailing was provided. Records show this package was mailed on October 25, 2021, and a Notice Card was left at the Tenants door (indicating the package was ready to be picked up at the post office) on October 28, 2021. Another Notice Card was left at the Tenants' door on November 3, 2021. The package was never picked up by the Tenants. The Tenants acknowledge getting the Notice Cards but stated they did not go to pick up the package from the Post Office. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed to have received this 2-Month Notice on October 30, 2021, five days after it was sent to them by registered mail.

The Landlord also provided a copy of this 2-Month Notice into evidence, which lists the following ground for ending the tenancy:

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).

- *The Landlord or the Landlord's Spouse*

The Landlord specified that he is going through a divorce and needs to move into the property himself, and cannot do so until the Tenants move out.

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. The Tenants are deemed to have received the 2-Month Notice on October 30, 2021, and they had until November 14, 2021, to dispute the 2-Month Notice.

After reviewing the file, I note that the Tenants' application to cancel the 2-Month Notice was not made until February 7, 2022. In this case, the Tenants did not apply within the allowable 15 day window, which lapsed on November 14, 2021. The Tenants were significantly over the allowable time frame to dispute the Notice (nearly two months late).

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**.

I note that the Tenants applied for more time to file this application. However, the Tenants only generally referred to the fact that they did not believe the Landlord had any intention to move into the property, and they felt he was more concerned about unpaid rent. The Tenants did not take the 2 Month Notice seriously up front, as they believed the Landlord was not actually interested in moving in.

I note that if the Tenants did not believe the 2-Month Notice was issued in good faith, they should have filed an application to dispute the Notice in a timely manner, rather than assume it was not legitimate. There is little to no evidence showing why the Tenants were unable to apply within the normal time period, or why their circumstances were exceptional, such that it warrants extra time to file an application for review. The Tenants were almost 2 months past the acceptable time period for filing the application.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the Notice and their late Application is therefore dismissed.

As the Tenants' 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 2-Month 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 Tenants.

Given my findings thus far, regarding the 2-Month Notice, and given the tenancy is ending, it is not necessary to consider the merits of the 10 Day Notices. As such, the 10 Day Notices will not be considered any further.

Conclusion

The Tenants' request for more time to make an application to cancel the 2-Month Notice is dismissed. Further, the Tenants' application to cancel the 2-Month Notice is also dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. 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: May 17, 2022

Residential Tenancy Branch