



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VILLE PROPERTY MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Tenant: CNL
For the Landlord: OPL, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on May 2, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice").

On June 6, 2022 the Landlord filed an Application for an Order of Possession based on the same Two-Month Notice they issued on March 30, 2022, and reimbursement of the Application filing fee. The Tenant's Application was already in place and the Residential Tenancy Branch joined the two Applications.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on July 20, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the other's Notice of Dispute Resolution Proceeding document, and the Tenant confirmed they received the Landlord's prepared evidence.

Issue(s) to be Decided

Is the Tenant entitled to more time in which to make their Application for Dispute Resolution, pursuant to s. 66 of the *Act*?

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the deciding issue and my final decision in this matter are set out in this section.

As part of their evidence, the Landlord provided a copy of the tenancy agreement that shows a rental arrangement between the parties, for \$1,200 per month payable on the 1st of each month.

The Landlord provided a copy of the Two-Month Notice, signed on March 25, 2022, and served to the Tenant on March 30, 2022. In the hearing the Tenant recollected the Landlord serving this document to them on the day that the Landlord came to collect rent. The Landlord presented that they served this document in person to the Tenant on March 30, 2022. In the Landlord's evidence is a "Proof of Service" document signed by a witness who observed this transaction. On this document the Landlord noted that the Tenant "refused to sign any documents."

The Tenant provided that they received a rent receipt from the Landlord on the same day that they paid their rent, and this was the same day the Landlord served the Two-Month Notice.

The Landlord gave the indication on the Two-Month Notice that "a person owning voting shares in the [Landlord's family] corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

The Tenant applied for a cancellation of the Two-Month Notice on May 2, 2022. This is past the 15-day timeline specified on page 1 of the document. This was after approximately one month of having "COVID-like symptoms that prevented them from attending a clinic, and these symptoms meant they had to stay at home for 5 weeks. Ultimately once the symptoms passed and the Tenant was able to see a doctor, they

attended to a ServiceBC office to process their Application. The Tenant in the hearing stated they were aware the Application needed to be filed; however, they were not able to attend because of sickness. The Tenant also provided that their eyesight is impaired, and this impacted their ability to comprehend all relevant important information from the document.

A letter from a doctor, dated June 28 in the Tenant's evidence, states the Tenant's appointments from April 22 and May 16 were moved by the Tenant, who "called to reschedule the appointment both times."

Analysis

The *Act* s. 49(4) states that a landlord may end a tenancy by giving a Two-Month Notice "if a person owning voting shares in the [landlord's family] corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

Following this, s. 49(8) states that within 15 days of receiving a notice a tenant may dispute that notice. Where a tenant does not make the application within 15 days, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this scenario, I find there was a valid tenancy agreement between the parties, and this establishes as fact that there was a landlord-tenant relationship.

In regard to the Tenant's late Application, filed after the dispute period, the *Act* s. 66(1) provides:

The director may extend a time limit established by this Act only in exceptional circumstances.

In these circumstances, I find that the Tenant did not prove exceptional circumstances were present. This is not proven in neither their oral testimony, nor their documentary evidence. Therefore, I find the Tenant is not entitled to more time to dispute the Two-Month Notice.

I find the Tenant did not make their Application within the timeline set out in s. 49(8), and thus s. 49(9) applies. The Tenant gave conflicting information about their eyesight affecting their ability to make the Application to dispute the Two-Month Notice; however, they gave more detail on their COVID-like symptoms that led them to stay at home over

an approximately one-month timeframe. The one doctor's note that is relevant evidence does not set out that the Tenant suffered these symptoms or was prevented from visiting a doctor for that reason. The doctor even noted that the Tenant had a scheduled appointment on April 15, and this was moved to May 16, and again to June 15. With the Tenant allegedly suffering dire health consequences, it is not known why they chose to delay the visit to the clinic.

Aside from this, I am not satisfied that symptoms noted prevented them from entering ServiceBC, and they did not prove this was a matter of policy at that time in April 2022 after many preventive health measures were lessened. Further, the Tenant did not explain why they could not enlist others to assist them with this Application, or why they were not able to do this online.

For these reasons, I dismiss the Tenant's Application to cancel the Two-Month Notice. The tenancy is ending. This is an application of s. 49(9) of the *Act* which provides that where the Tenant does not make an Application within 15 days, they are conclusively presumed to have accepted the tenancy will end.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find the Two-Month Notice complies with the requirements of form and content. It is signed and dated by the Landlord, gives the address of the rental unit, gives the effective date, states the grounds for ending the tenancy, and is in the approved form. For this reason, the Landlord here is entitled to an Order of Possession.

Because the Landlord was successful in their Application for an Order of Possession based on the Two-Month Notice, I grant them reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the tenant's Application for a cancellation of the Two-Month Notice.

I grant an Order of Possession to the Landlord effective two days after service of the Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100 for the Application filing fee. The Landlord is provided with this order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and 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 s. 9.1(1) of the *Act*.

Dated: July 28, 2022

Residential Tenancy Branch