



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, OPQ, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the landlord under the *Residential Tenancy Act*, (the “Act”) for an order of possession based on an undisputed Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Notice”) issued on November 25, 2021, for a monetary order for unpaid rent and to recover the cost of the filing fee.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord’s agent testified that the tenant was served with the Application and Notice of Hearing by registered mail with was sent on March 23, 2022, and successfully delivered to the tenant on March 25, 2022. Filed in evidence is a copy of the Canada Post tracking history.

The tenant asked is that the only way they would received the dial information for the hearing because they have never opened the package that came by Canada Post. The landlord responded that they also put a courtesy package in the tenant’s mailbox.

In this case, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Hearing. Clearly the tenant received the documents by Canada Post. I am not sure what the purpose was of the tenant for not opening the package they received as this could only be a disservice to themselves and leads me to believe that the tenant may have a pattern of not opening mail. The tenant should be aware service cannot be avoided, simply by not opening the package or refusing to pick up a package.

Preliminary and Procedural Issue.

At the outset of the hearing, I questioned the parties regarding the Notice as neither party submitted a copy of the Notice for my review and consideration. Both parties at the hearing provided me with the following testimony.

The landlord's agent testified that they filed a copy of the Notice when they submitted their application for dispute resolution, and they are not sure why it is not on their digital file.

The landlord's agent stated that the tenant was served with the Notice on November 25, 2021, by leaving a copy in a mailbox where the tenant resides. The landlord's agent stated the Notice, is dated November 25, 2021, with an effective date of January 31, 2022, and the reason within the Notice was the tenant no longer qualifies for subsidized rental unit.

The tenant testified that the End of Tenancy Notification was dated September 17, 2021, and crossed off and changed to November 25, 2021. The tenant stated attached to that letter was the Notice, date November 25, 2021, with an effective date of January 31, 2022, and the reason was the tenant no longer qualifies for subsidized rental unit.

The landlord's agent testified that the End of Tenancy Notification is a letter that was originally printed on September 17, 2021; however, they held back the letter until they issued the Notice on November 25, 2021, so they simply redated the letter.

As I am satisfied that both parties have confirmed the same evidence on the Notice, I accept that a technical error likely occurred when the landlord first said to have filed their evidence. I find it appropriate to allow a copy of the Notice be filed after the hearing for my review or consideration. I find this is not prejudicial to either party as both parties confirmed that they had a copy of the Notice before them at the time of the hearing.

In this case, the landlord claimed for unpaid rent at the time they filed their application; however, this is not sufficiently related to the Notice. Further, the detail of dispute describes the issue of unpaid rent as follows: \$255 for February 2022, and \$595 for April, May and June for overholding. The landlord stated that it is their practise to file for

unpaid rent because normally the tenant stops paying rent after they are served with an eviction notice. The tenant raised the issues that the rent has been paid and it was lowered to \$510.00 for a period of time. I note by the landlord's own receipts show rent was billed at \$510.00 for several months supporting the tenant's testimony. I find I am not prepared to deal with the issue of unpaid rent at today's hearing as it is unrelated to the Notice. Therefore, I dismiss this portion of the landlord's claim with leave to reapply after the landlord reviews their ledgers and determines if rent is truly owed.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on an undisputed Notice?

Background and Evidence

The tenancy began on October 1, 2015. Rent is calculated geared to income as this is a BC Housing Program.

The landlord's agent testified that tenant has failed to complete the annual review for October 2021. The agent stated that one of the tenant's children turned 19 years of age and as a requirement for subsidized housing they as an adult must provide the requested financial documents to support proof of income. This is to calculate the rent and determine if they qualify for subsidized housing.

The landlord's agent testified that the other option is that the adult child moves-out of the subsidized unit and be removed from the tenancy agreement as an occupant. This would mean that the tenant no longer qualified for the three-bedroom rental unit.

The landlord's agent testified after multiple attempts the tenant did not provide any of the financial documents requested for their adult child or remove the occupant from the tenancy agreement and as a result they issued the Notice on November 25, 2021, which was not disputed by the tenant. The landlord seeks an order of possession.

The tenant testified that they did not provide their annual review documents because there were repairs needed to the rental unit.

The tenant testified that they did provide their financial documents but did not provide their adult child's information when requested because their child had move-out and was staying with other family members.

The tenant testified that after the landlord repaired the staircase, they gave the landlord one paystub for their adult child because they were going to be moving back in. The tenant stated that this was recently which they believe was in March 2022 and not before the Notice was issued in November 2021.

The tenant testified that they did not dispute the Notice, because they were overwhelmed with paperwork and they did contact the residential tenancy branch, their MLA and their city counsel. However, did not contact an advocate to assist them.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1)In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a)operated by a public housing body, or on behalf of a public housing body, and

(b)**occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.**

(2)Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3)Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a)not earlier than 2 months after the date the notice is received,

(b)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

(c)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4)A notice under this section must comply with section 52.

(5)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.

(6)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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.

In this case, I do not need to consider the merits within the Notice, because the Notice was not disputed by the tenant and the effective date of the Notice has now passed. A copy of the Notice was filed in evidence immediately after the hearing and confirms both parties' testimony. I find the Notice complies with section 52 of the Act.

The tenant received the Notice of November 25, 2021, as it was left in the tenant's mailbox. The tenant had 15 days after the date the tenant receives the Notice to file an application for dispute resolution. The tenant did not dispute the Notice and is conclusively presumed to have accepted that the tenancy ends on the effective date within the Notice, which was January 31, 2022. I find the tenancy legally ended on January 31, 2022, and the tenant is overholding the premises as an occupant. I find the landlord is entitled to an order of possession based on an undisputed Notice

As the landlord has accepted occupancy rent for the month of July 2022, I find it appropriate to extend the effective vacancy date in the Notice to **July 31, 2022**, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date **at 1:00 PM**. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the landlord was successful with their application, I find the landlord is entitled to recover the cost of filing their application. I authorize the landlord to keep \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant did not dispute the Notice and is conclusively presumed to have accepted that the tenancy ends on the effective day of the notice.. The landlord is granted an order of possession.

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: July 06, 2022

Residential Tenancy Branch