



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNL, PSF, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing, and the landlord attended the hearing with his counsel, SD. Also in attendance were the landlord's property managers, ML and MJ. As both the landlord and tenant were present, service of documents was confirmed. The landlord acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Both parties stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issues

Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's was the primary issue before me. The tenant's other issues were not sufficiently related and I exercised my discretion to dismiss them with leave to reapply at the commencement of the hearing.

The landlord attending today's hearing testified he is the owner of the rental unit and that the party named as landlord on the tenants' application for dispute resolution is the property management company that he hired to manage the property. Pursuant to section 64, I amended the tenants' application for dispute resolution so that the name of the landlord is the same as the one on the tenancy agreement. The landlord's name is properly reflected on the cover page of this decision.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The rental unit is an entire two-storey house. The tenancy began on August 1, 2015, with rent originally set at \$2,700.00 per month payable on the first day of each month. The parties agree that the property was being managed by the property manager company originally named on the tenants' application for dispute resolution.

On March 12, 2022, the property manager sent the tenants a 2 Month Notice to End Tenancy for Landlord's Use, together with a cover letter via registered mail. Copies of both were provided as evidence, as was a copy of the registered mail receipt from Canada Post. The tracking number is recorded on the cover page of this decision.

The property manager ML testified that she sent both tenants the notice to end tenancy in a single package. The landlord went on the Canada Post website and testified that they got confirmation that the registered mail was signed for by the tenant KD on March 16, 2022. The witness ML further testified that she clearly remembers that she put all four pages of the 2 Month Notice to End Tenancy for Landlord's Use and the single page cover letter in the package before sending it off to the tenants via registered mail. On July 8th, ML gave the tenants another copy of the notice to end tenancy because the tenants alleged in their application for dispute resolution that they only received pages 1 and 2.

Landlord's counsel submits that the landlord and his family have an honest intention to move in after the tenants vacate the unit. The landlord provided documentary evidence to show he moved approximately a half ton of household goods to BC. The landlord obtained visas and permits to work and attend school for his family. The landlord has registered his children in local schools. The landlord submits that he has no ulterior motive to end the tenancy with the tenants, he honestly intends on occupying the property with his family.

The property manager ML testified that the landlord has compensated the tenants with the equivalent of one month's rent by not collecting rent for the month of May 2022. Rent for the month of August has been paid, however the landlord advised the tenants that they accepted rent money for "use and occupancy" only.

Landlord's counsel argues that the tenants filed their application seeking to dispute the notice to end tenancy for landlord's use more than 15 days after being served with it, contrary to section 49 of the *Act*. The Notice of Dispute Resolution Proceedings shows the tenants filed the dispute on May 3, 2022, which is 48 days after receiving the notice to end tenancy.

The tenant gave the following testimony. They had originally filed their application for dispute resolution on April 3, 2022 and filed an application for substituted service upon the landlord. This was denied by an adjudicator and the tenants changed the named landlord to the property management company in order to serve them instead. This justifies the delay shown on the filing date of the application.

The tenants testified that they didn't get the registered mailing as described by landlord's counsel. The notice to end tenancy package was found by them in their mailbox on March 20th. It wasn't signed for by KD. In their application, the tenants allege that the signature was forged, and, in their evidence, the tenant provided the delivery confirmation certificate from Canada Post bearing a signature KD says isn't hers. The tenants testified they filed a complaint with Canada Post, but they didn't provide that paperwork for this hearing. Further, KD testified that she didn't provide evidence of this for the hearing, but she couldn't have signed for the mailing on March 16th because she was performing an inspection at a hospital on that day, nowhere near the property. When KD discovered the registered mailing package in their mailbox, not signed for, she immediately showed it to the co-tenant and asked him what it was about.

The tenants submit that they only received pages 1 and 2 of the 4-page notice to end tenancy. This made them suspicious of the landlord, since the information on how to dispute it was not provided.

The tenants raised concerns about what the documents supplied by the landlord prove. The tenants argue that he doesn't understand the immigration records. The cargo document indicates the cargo management company hired by the landlord could sign for the landlord's belonging from overseas. The tenant says is peculiar that the landlord waited until June to register his children in school if he knew since March that he was going to move in. Lastly, the tenants argue that the landlord only provided a registration application for school, not a proof of registration. It only applies to 1 of the landlord's 3 children.

Analysis

The landlord submits that they served the tenants with the 2 Month Notice to End Tenancy for Landlord's Use via registered mail on March 12th and provided evidence that it was signed for by the tenant KD on March 16th. The tenants provided a copy of the delivery confirmation from Canada Post that provide a signature purported to be that of KD, indicating it was signed for by her on March 16th.

The tenants submit that the signature was forged and that neither of them signed for the registered mail on March 16th. They "found" the mailing in their mailbox on March 20th. Although they had the opportunity to provide evidence to corroborate this, such as a copy of the complaint they made to Canada Post, they did not. Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions] states that Registered Mail includes

any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

On a balance of probabilities, I find it unlikely that a postal carrier would leave a registered mailing in a mailbox without obtaining confirmation of delivery from the named recipient. I also find it unlikely that a postal worker would give a registered mailing to a named recipient without first checking identification from the person signing for it. The fact that the postal worker collected somebody's signature, purported to identify as KD, further leads me to believe that KD signed for the mail herself on March 16th. Lastly, the tenant provided no evidence to corroborate her allegation that she was not in town on March 16th. For these reasons, I find it more likely than not that KD was served with the notice to end tenancy on March 16, 2022, in accordance with sections 88 and 90 of the *Act*. As KD testified that she showed the notice to the co-tenant KJ the same day she received it, KJ is deemed served with the notice to end tenancy on March 16, 2022 pursuant to section 71 of the *Act*.

The landlord's property manager, ML testified that she served all 4 pages of the notice to end tenancy when mailing it to the tenants. I found ML's testimony to be credible and forthright. Conversely, the tenants allege that only pages 1 and 2 were served. While it is impossible for them to prove this allegation, I find the witness's testimony more persuasive than that of the tenants. I find that the notice served upon the tenants complies with the form and content provisions of section 52 of the *Act*.

I have reviewed the history of this file in the Residential Tenancy Branch's dispute management system, and I find the tenants filed their application on April 3, 2022. Likewise, the system shows the tenants paid for the application on the same date. The application is considered to have been made on April 3, 2022, pursuant to rule 2.6 of the Residential Tenancy Branch Rules of Procedure.

Sections 49(5) and 49(6) state:

(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.

As stated previously, I find the tenants were served with the notice to end tenancy for landlord's use on March 16, 2022, pursuant to sections 88 and 90. The last day the tenants could have filed their application to dispute the notice to end tenancy under section 49 is Thursday, March 31, 2022, fifteen days after March 16. The tenants filed their application on April 3, 2022, 18 days after being served with the notice.

Consequently, the tenants are conclusively presumed to have accepted the tenancy ended on May 31, 2022, the effective date of the notice, pursuant to section 49(6)(a). As the effective date has passed, the landlord is entitled to an Order of Possession effective two days after service upon the tenants.

The tenants are not entitled to recover their filing fee as their application was not successful.

As the tenancy is ending, the remainder of the tenants' application is dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: August 18, 2022

Residential Tenancy Branch