



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Section 49 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord and his support attended the hearing at the appointed date and time. The Tenant called in eight minutes past the start time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on July 29, 2022. The Landlord's support testified that she witnessed the service of the Two Month Notice. I find that the Two Month Notice was served on the Tenant on July 29, 2022 pursuant to Section 88(a) of the Act.

The Tenant testified that she served the Notice of Dispute Resolution Proceeding package (the "NoDRP package") on the Landlord by email. The Tenant applied for authorization to substitutionally serve the Landlord by email, but that application was denied. The Landlord denied receiving the NoDRP package, although the Landlord was

informed by the RTB that the Tenant was disputing their Two Month Notice. I find the Tenant has not properly served the Landlord with her NoDRP package.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to more time to dispute the Two Month Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on February 15, 2020. Monthly rent is \$1,300.00 payable on the first day of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit and the child of the Landlord and the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was September 30, 2022.

The Tenant applied for dispute resolution on August 16, 2022. The RTB issued the NoDRP package to the Tenant on September 1, 2022. The Tenant applied for authorization to serve the NoDRP package by email on September 4, 2022. That authorization was denied on September 15, 2022.

The Tenant testified that due to her whole family having Covid-19, she served the Landlord with the NoDRP package by email on an unknown date. The Tenant did not provide copies of the sent email in her documentary evidence. The Landlord denied receipt of the Tenant's email containing the NoDRP package. The Tenant argued that the Landlord confirmed receipt in a discussion on the residential property driveway.

The Landlord's support maintained that her son at present does not have a place to live. She stated he has been staying with friends until he has access to the rental unit. She testified that her son lives and works in the same city as the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: landlord's use of property

49 ...

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

(i) *not earlier than 2 months after the date the tenant receives the notice,*

(ii) *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*

(iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*

...

(3) *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

...

(7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*

- (8) *A tenant may dispute*
- (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*
- ...
- (9) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.*

The Tenant was served with the Two Month Notice on July 29, 2022. I find the Two Month Notice complies with the form and content requirements pursuant to Section 52 of the Act. The Tenant applied for dispute resolution on August 16, 2022 which is beyond 15 days after receipt of the notice. The Tenant applied for more time to dispute the notice.

RTB Policy Guideline #36-Extending a Time Period specifies that an arbitrator may extend or modify a time limit established by the Act only in exceptional circumstances. It states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well*
- the party did not know the applicable law or procedure*
- the party was not paying attention to the correct procedure*

- *the party changed his or her mind about filing an application for arbitration*
- *the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The Tenant testified that her and her family had Covid-19 and were really sick. The Tenant did not provide any medical documentation which supports she was too sick to apply for dispute resolution within the required legislated time period. I find the Tenant has not proven that exceptional circumstances existed that prevented her from applying for dispute resolution in time after receipt of the Two Month Notice. On this basis, I cannot grant an extension of a time period, and I find the 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. I dismiss the Tenant's application to cancel the Landlord's Two Month Notice.

As the Tenant was unsuccessful in her application, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) *the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on my finding that this tenancy is conclusively presumed to have ended, I uphold the Landlord's Two Month Notice and grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of 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 Act.

Dated: December 01, 2022

Residential Tenancy Branch