



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REDBRICK PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction and Preliminary Matters

On July 31, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant M.S. attended the hearing. A.J. attended the hearing as the owner of the rental unit and G.S. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on August 18, 2022, and A.J. confirmed receiving this package. As such, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenants’ Notice of Hearing package.

The Tenant then advised that she served their evidence package to the Landlord by registered mail on November 21, 2022, and A.J. confirmed that the Landlord received this package. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

In addition, the Tenant testified that a Tenant Request to Amend a Dispute Resolution form was included in this evidence package as well, and the amendment was to dispute a second One Month Notice to End Tenancy for Cause, dated August 19, 2022. She

acknowledged that this second notice was not disputed until the amendment form was completed and served to the Landlord on November 21, 2022. As well, she stated that she did not file the completed amendment form with the Residential Tenancy Branch, but simply included it as part of their evidence package.

A.J. confirmed that the Landlord received this amendment form. As well, he advised that the Landlord's evidence was served to the Tenants by email on August 19, September 13, and September 16, 2022. The Tenant confirmed that they received this evidence, and that she had no position with respect to the manner with which it was served. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

All parties agreed that the first One Month Notice to End Tenancy for Cause was served to the Tenants by being placed under the Tenants' door on July 29, 2022, and the Landlord was cautioned that this was not an acceptable method of service pursuant to Section 88 of the *Act*. The Tenant confirmed that they received this first notice and despite the manner with which it was served, she indicated that it was not prejudicial to them.

The reasons the Landlord served this first notice were because the Tenants "or a person permitted on the property by the Tenant has put the landlord's property at significant risk" and because of a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Details of Dispute Section regarding the reasons why this notice was served pertained to the Tenants not renewing their required insurance. This first notice indicated that the effective end date of the tenancy was August 31, 2022.

All parties also agreed that a second One Month Notice to End Tenancy for Cause was served to the Tenants by email on August 19, 2022. The Tenant confirmed that they received this second notice, and she did not have any position with respect to the manner with which it was served. The reasons the Landlord served this second notice were because the Tenants "or a person permitted on the property by the Tenant has put the landlord's property at significant risk" and because of a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." However, the Details of Dispute Section regarding the reasons why this notice was served pertained to the Tenants not renewing their required insurance, and due to a breach of the no smoking clause in the tenancy agreement. This second notice indicated that the effective end date of the tenancy was September 30, 2022.

The Tenant advised that they did not realize that they were required to dispute this second notice within 10 days of receiving it, and she did not provide any reason for why they amended their Application to dispute the second notice almost three months after receiving it.

Submissions were taken from both parties with respect to the reasons the first notice was served, and the hearing went well past the one-hour time limit allotted to these matters. Regardless, the undisputed evidence is that the second notice was served to the Tenants on August 19, 2022. According to Section 47(4) of the *Act*, the Tenants had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *“If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.”*

The undisputed evidence is that the Tenants disputed the first notice within two days of receiving it, which indicates to me that they, more likely than not, understood that the notice had to be disputed within a particular period of time. However, the undisputed evidence is that the Tenants received a second notice, and in response to this, they completed a Tenant Request to Amend a Dispute Resolution form approximately three months after receiving it. As well, they did not file the completed amendment form with the Residential Tenancy Branch, but simply included it as part of their evidence package to the Landlord.

I find it important to note that the information with respect to the Tenants' right to dispute the notices is provided on the first and third page of those notices. Given that the Tenants disputed the first notice, if they then completed a Tenant Request to Amend a Dispute Resolution form to dispute the second notice, I can reasonably conclude that they were aware that the second notice had to be disputed as well. Given this conclusion, it is not clear then why they waited approximately three months after receiving the second notice to do so.

When reviewing the totality of the submissions before me, I am not satisfied that the Tenants properly amended their Application by filing it with the Residential Tenancy Branch, in accordance with Rule 4.1 of the Rules of Procedure (the “Rules”). Moreover, even if I were to accept that they properly amended their Application, they amended it significantly late as the second notice was served to them approximately three months prior to their attempted amendment.

Ultimately, as the Tenant did not provide any evidence corroborating that they had any extenuating circumstances that prevented them from disputing the second notice on time, I am satisfied that the Tenants were conclusively presumed to have accepted the second notice. As I am satisfied that the second One Month Notice to End Tenancy for Cause is a valid notice, and as the Tenants did not comply with the *Act* by disputing this second notice in accordance with the *Act* and the Rules, I grant the Landlord an Order of Possession that is effective on **January 31, 2023 at 1:00 PM after service of this Order** on the Tenants.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for their Application.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective on **January 31, 2023 at 1:00 PM after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: January 3, 2023

Residential Tenancy Branch